United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-1660

B

P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

DOROTHY BOYD, individually and on behalf of all others similarly situated,

Plaintiff-Appellee,

INEZ STONEY,

Intervenor-Plaintiff-Appellee,

against

THE LEFRAK ORGANIZATION and LIFE REALTY, INC.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX
Volume I, Pages 1a-452.

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UNITED STATES COURT OF APPEALS
FILED
JUL 29 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

(3)

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Docket Entries

71C 1433

DOROTHY BOYD V. U.S.A. et al

DATE	FILINGS PROCEEDINGS	AMOUNT REPORTED IN ENCUMBRANCE RETURNS
11-5-71	MOTION TO INTERVENE IS TREATED AS COMPLAINT FILED. (Papers transferred from 70-C-964 No 29 to 36 Incl. as per instruction of Judge Weinstein)	1
1-3-72	AMENDED COMPLAINT FILED. Supplemental summons issued.	2
3-7-72	Notice of motion and memorandum filed, pursuant to Rule 12(b) dismissing complaint against U.S., Dept of Justice and Atty General etc. (ret Mar 16, 1972)	3/4
3-7-72	By WEINSTEIN, J.- Order on stip (signed 3-6-72) filed extending time for defts The Lefrak Organization and Life Realty Inc to answer complaint to 3-21-72.	5
3/15/72	Letter of 3/10/72 from Marttie L. Thompson filed.	6
3/16/72	Before WEINSTEIN, J. - Case called and deft's motion to dismiss adj'd to 3/29/72 at 10:00 A.M.	7
3-23-72	By WEINSTEIN, J - Order on stip filed extending time for defts The Lefrak Organization & Life Realty Inc to answer complaint to Mar 29,1972.	8
3/29/72	Before Weinstein,J.-Case called & adj'd to 5/4/72 for hearing on deft's motion to dismiss (MITCHELL)	
4/7/72	Pltff's Memorandum in Opposition to deft's motion to dismiss (Mitchell)	9
4-20-72	Notice of motion and memorandum filed, pursuant to Rule 23 permitting this action to be maintained as a class action etc. (ret May 4, 1972)	10/11
4-20-72	Notice of motion and memorandum filed, pursuant to Rule 24(a) and 24(b) permitting Inez Stoney to intervene in this action etc. (ret May 4, 1972)	12/13
4-20-72	Defts' demand for address of pltff filed.	14
4-28-72	Address of Pltff filed.	15
5/2/72	Deft's (JOHN MITCHELL) reply memo filed.	16
5/2/72	Defts' (U.S.A. & U.S.DEPT. OF JUSTICE) supplemental memo filed	17
5-4-72	Before WEINSTEIN,J.-Case called-Deft's motion to dismiss-Argued Decision reserved-All other motions adjd to 5-18-72 at 9:30 AM	
5-5-72	Copy of order dated 11-4-71 filed.	18
5-5-72	Copy of letter to Judge Weinstein from D. Rudenstein dtd 11-3-71 Filed.	19
5-5-72	Letter from Martie L. Thompson to Judge Weinstein dated 4-30-72 filed.	20

Docket Entries

71 C 1488

DOROTHY POYD, individually and on behalf of all others similarly situated,

Plaintiff

-against-

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF JUSTICE; and JOHN MITCHELL, its Attorney-General; THE LEFRAK ORGANIZATION; and LIFE REALTY, INC.,

Defendants.

X

Attorneys

For Plaintiff WILLIAM L. REMLY
Bedford-Stuyvesant Community Legal Services Corporation
1170 Fulton St. Bklyn 11216
638-9324

For Defendant LIFE REALTY INC.,
Goldstein, Shames & Hyde, Es
655 Madison Ave. N.Y. 100
TE 8-3700

SEEKS: Injunction

JURY TRIAL CLAIMED RELATED TO: 70-C-964

ON

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED
5-71	WITHOUT PAYMENT of FEES		

DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
5-7-71	Motion Papers	5 —	
5-7-71	Notice of Appearance	—	—
5-7-71	Notice to Take Deposition	—	—

ABSTRACT OF COSTS

TO WHOM DUE	AMOUNT

RECEIPTS, REMARKS, ETC

Docket Entries

1433 CIVIL DOCKET DOROTHY BOYD V. U.S.A. et al

DATE	FILINGS—PROCEEDINGS	PLAINTIFF	DEFENDANT	JUDGMENT
5-8-72	By WEINSTEIN,J.-Order filed adjourning pltff's motion for class action proceeding to 5-11-72.		21	
5-8-72	By WEINSTEIN,J.-Order filed adjourning Application of Inez Stoney to intervene as pltff to 5-18-72.		22	
5-9-72	By WEINSTEIN, J.- Order on stip dated 5-8-72 filed, substituting Goldstein, Shames & Hyde, Esqs. in place of Anderson & Allegaert as attys for Life Realty Inc.		23	
5/15/72	Letter dtd 5/12/72 from Wm. L. Reese, Jr. filed.		24	
5/18/72	Before Weinstein,J.-Case called for hearing on pltff's motion to maintain action as class action-Motion argued & granted-Class includes all welfare recipients in N.Y. metropolitan area who might apply for housing controlled by Lefrak interests-So ordered			
5/18/72	Before Weinstein,J.-Case called for hearing on application of Inez Stoney to intervene as pltff-Motion argued & granted-So ordered.			
6-2-72	Affidavit of Edward Brodsky and memorandum filed, in opposition to pltff's motion etc.		25/26	
6-8-72	By WEINSTEIN, J.- MEMORANDUM & ORDER dated 6-7-72 filed, The motion to dismss of the Attorney General, the Department of Justice and the United States is granted. SO ORDERED.		27	
6/12/72	Stenographer's transcript of 5/18/72 filed.		28	
6-15-72	Letter from Goldstein,Shames & Hyde, Esqs dated 6-13-72 filed.		29	
6/15/72	By Weinstein,J.-Memo & Order of 6/7/72 granting defts' (ATTORNEY GENERAL, DEPT. OF JUSTICE & U.S.A.) motion to dismiss filed. (Copy of memo & order mailed to counsel)		30	
/19/72	Letter of 6/15/72 from Cornelia McDougald filed.		31	
6-29-72	Pltffs' first interrogatories to deft Lefrak Organization filed		32	
9-6-72	By WEINSTEIN, J.- Order on stip dtd 9-5-72 filed extending time for defts to answer pltffs' first interrogatories to 9-15-72.			
10-5-72	By WEINSTEIN, J.- Order on stip filed extending time for deft Lefrak Organization to answer pltffs' first interrogatories to 10-4-72		33	
11/15/72	Deft's (LEFRAK) answers to pltff's interrogatories filed.		34	
			35	

OVER

D. C. 110

Docket Entries

71C-1433 BO[illegible] vs THE LEFRACK ORGANIZATION, et al

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT RECEIPTED IN EMOLUMENT RETURNS	
		PLAINTIFF	DEFENDANT		
11/17/72	Notice of motion & memo of law ret 11/22/72 for an order granting leave to pltff to proceed in forma pauperis filed.				36/37
11/22/72	Affidavit of Edward Brodsky filed.				38
11/29/72	By Weinstein,J.-Memo & Order dtd 11/28/72 granting pltff's motion to proceed in forma pauperis, granting leave to have subpoenas served without payment & permitting taking of deposition by tape recordings filed.				39
12/5/72	Pltff's notice to take deft's deposition filed.				40
12/5/72	Pltff's request for production filed.				41
12/7/72	Pltff's notice to take deposition of NYC Dept of Soc Svces filed.				42
1-24-73	Letter dtd 1-22-73 from Ruth Balen filed.				43
1-24-73	By WEINSTEIN, J. - Order dtd 1-23-73 adjourning conference to 2-1-73 at 9:30 A.M. filed on document #43.				--
1/29/73	By Weinstein,J.-Order dtd 1/24/73 adjourning trial to 4/9/73 & pre-trial conference to 4/2/73 filed.				44
1/31/73	Before Weinstein,J.-Case called & adj'd to 4/2/73 for pre-trial conference				-
3-5-73	Pltff's request for admission filed.				45
4/2/73	Before Weinstein,J.-Case called for p/t conf.-Motion by Mr. Brodsky, atty for the defts. for the court to disqualify himself argued and decision reserved.				
4/3/73	Defts. Response to request for admission filed.				46
4/16/73	Seven depositions filed.				47-53
4/16/73	Notice of motion returnable 4/27/73 & pltffs. memorandum of law in support of motion for an order the response of defts. to pltffs. request for admissions does not comply with Rule 36, FRCP.				54/55
4/27/73	Before Costantino,J.-Case called for hearing on pltffs motion for an order pursuant to rules 36 & 37 of the F.R.C. that the response of the defts. does not comply with rule 36-Adjd. to 4/30/73 at 10 AM				
4-30-73	Before COSTANTINO, J. - Case called for hearing on pltff's motion. Motion argued. Decision reserved. Case set down for trial on 7-23-73 at 10 A.M.				
5/1/73	Affidavit of Edward Brodsky & defts. memo of law in opposition to motion filed.				56/57
6-14-73	Before Costantino, J.--Case called & trial adjd to 7-23-73 at 10am				
7-25-73	Notice of motion for the disqualification of Costantino, J. filed.				58

Docket Entries

3 CIVIL DOCKET BOYD vs. THE LEFRAK ORANIZATION, et al

DATE	FILING—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT PROCEEDINGS
7/23/73	Before Costantino,J.-Case called-Trial adjd. to 7/25/73 at 10:00 AM			
7-25-73	Before COSTANTINO, J. - Case called for hearing on deft's motion for the disqualification of Judge Mark A.Costantino. Motion argued. Decision reserved. Trial adj'd without date pending motion.			
8-10-73	By COSTANTINO, J. - Memorandum and order dtd 8-10-73 denying pltff's motion that court disqualify itself in this action filed. (p/c mailed to attys).		59	
9-14-73	Copy of letter from Chambers to Mr. Brodsky setting 9-19-73 at 10 A.M. for conference filed.		60	
9-19-73	Before COSTANTINO,J.Case called & conference adjd to 11-5-73 @ 4:00 PM			
10-18-73	Letter of Edward Brodsky to Judge Costantino dtd. 10-17-73 re: amending deft's responses to pltff's requests filed.		61	
10-23-73	By COSTANTINO, J.--Order dtd10-23-73 that the participants in the home care project may be public assistance recipients, etc. filed. (p/cmailed to attys.)		62	
11-7-73	Pltff's memorandum of law in support of court's power to take judicial notice, etc. filed.		63	
11-14-73	By COSTANTINO, J.--Order on stipulation of facts filed.		64	
11-20-73	Before CLARK,J. - Cas called for pre-trial conference. Conference held and concluded. 12-3-73 for trial before J. Clark at 9:30 A.M. in courtroom #6			
11/30/73	Pltff's and Intervenor-Plfff's trial brief filed.		65	
11/30/73	Deft's Pre-trial Memorandum of Law filed.		66	
11-28-73	Before CLARK, J. - Case called. Pre-trial conference held & concluded. Case set down for trial on 12-3-73 at 9:30 A.M.			
12-3-73	ANSWER of LEFRAK ORGANIZATION & LIFE REALTY, INC. filed.		67	
2-3-73	Before CLARK, J. - Case called. Answered ready. Trial to resume on 12-4-73 at 9:30 A.M.			
2-4-73	Before CLARK, J. - Case called. Trial resumed. Ad'jd. to 12-5-73 at 9:30 A.M.			
2/5/73	Before CLARK, J.- Case called. Trial resumed-E. Brodsky atty for the deft made an application to the court for the dismissal of the complaint on the ground that the pltffs have failed to make out a prima facie case-Court denied application-Trial to resume on 12/6/73.			

D. C. 110

Docket Entries

'71C 1433 BOYD vs THE LEFRACK ORGANIZATION et

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT PERMITTED TO BE EMOLUMENT RETURNED	
12/6/73	Before CLARK, J.- Case called- Trial resumes-An application was made by E. Brodsky atty for the deft for dismissal of the complaint on the ground that the pleff has failed to make out a prima facie case etc. -Court denied the application- Pltff sums up his case to the court-E. Brodsky atty for the deft sums up his case to the Court-Trial concluded				
1-2-74	Pltff's notice of deposition and post-trial reply memorandum of law filed.				68/69
4/16/74	By CLARK, J. - Findings of Fact & Conclusions of Law dtd. 4-15-74 directing Clerk of Court to enter final judgment in accordance herewith, including appropriate injunctive relief. No proof of damages having been offered, none is allowed. So ordered. Filed.				70
4/22/74	By CLARK, JUSTICE--Order enjoining injunctive relief dtd 4/22/74 filed.				71
4/22/74	JUDGMENT dtd 4/22/74 that defts Lefrak & Life Realty are enjoined from promulgating and applying in their rental policies the 90% financial rule, etc. filed. (Approved by Justice Clark)				72
4/22/74	By CLARK, J.--Order dtd 4/22/74 amending the findings of fact and conclusions of law filed with annexed amended copy of findings of fact and conclusions of law.				73
4-29-74	By CLARK,J. - Order dtd. 4-29-74 granting motion for injunctive relief against defts etc. filed. (p/c mailed to attys)				74
4/29/74	By CLERK, J.--AMENDED JUDGMENT dtd 4/29/74 that defts Lefrak Organization and Life Realty Inc. are enjoined from promulgating and applying in their rental poslices the 90% financial rule, etc. filed. This judgment corrects, amends and supersedes the judgment entered in this cause on April 22, 1974 (p/c mailed to attys.)				75
5-1-74	Notice of appeal filed. Copy mailed to C of A. JN				76
5-8-74	Notice of appeal filed. Duplicate mailed to C of A. JN				77
5-20-74	Ttenographer's transcript of 7-25-73 filed.				78
5-20-74	Copy of defts' post trial memorandum of law & copy of pltff's post trial reply to memorandum of law filed.				79/80
6-14-74	Stenographer's transcripts dtd Dec. 3,4,5,6, 1973 filed.				81-84
6-14-74	Record on appeal certified and handed to Michael Timm for delivery to the C of A.				

A TRUE COPY ATTEST
LEWIS ORGEL, CLERK
BY _____ DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

DOROTHY BOYD, individually and on behalf of all others similarly situated,

Plaintiff

-against-

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF JUSTICE; and JOHN MITCHELL, its Attorney-General; THE LEFRAK ORGANIZATION; and LIFE REALTY, INC.,

Defendants.

X

71 Civ. 1433

AMENDED COMPLAINT

CLASS ACTION

I. PRELIMINARY STATEMENT

1. Plaintiff, individually and on behalf of all others similarly situated, seeks a judgment enjoining and declaring illegal the rental policy of defendants Lefrak Organization and Life Realty, Inc. This policy deprives welfare recipients most of whom are black and Puerto Rican of the opportunity to rent apartments. It thereby violates the Fair Housing Act, 42 U.S.C. §§3601 et seq., the Thirteenth and Fourteenth amendments to the Constitution of the United States, and the Civil Rights Act of 1866, 42 U.S.C. §1982. Plaintiff also seeks declaratory and mandamus relief against the United States Department of Justice, and its Attorney-General, John Mitchell, on the grounds that they have failed to carry out duties enjoined upon them by the Fair Housing Act §§ 3601, 3608 (c), and §3613, and by the Fifth and Thirteenth amendments to the

Constitution of the United States, and the Civil Rights Act of 1866, 42 U.S.C. §1982. Plaintiff further seeks damages against all the defendants under 42 U.S.C. §3612 (c), and 42 U.S.C. §1982, and the Fifth, Thirteenth and Fourteenth amendments.

II. JURISDICTION

2. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §1343(3) and §1343(4), 28 U.S.C. §1331(a), 42 U.S.C. §3610, and 28 U.S.C. §1361 and 1346 (a) (2).

III. CLASS ACTION ALLEGATIONS

3. The plaintiff brings this action on her own behalf and on behalf of all other persons similarly situated pursant to Rules 23(b) (1) (A) or 23(b) (2) or 23(b) (3) of the Federal Rules of Civil Procedure.

4. Plaintiff is a member of a class, containing upon information and belief, more than 1,000,000 persons, who are all recipients of public assistance and who reside within the New York City metropolitan area. Because she is a welfare recipient, plaintiff and her class are not eligible to rent one of defendants the Lefrak Organization's and Life Realty, Inc's apartments under the existing policies of the defendants.

5. Plaintiff can fairly and adequately protect the interests of the class. Because of her indigency, plaintiff is represented by attorneys employed by COMMUNITY ACTION FOR LEGAL SERVICES, INC. and the BEDFORD-STUYVESANT COMMUNITY

LEGAL SERVICES CORPORATION, agencies funded by the United States Office of Economic Opportunity. These agencies have resources and experience in the area of civil rights and public assistance litigation adequate to protect all members of the class. Plaintiff knows of no conflicts of interest among members of the class.

6. The questions of law and fact raised by plaintiff's claims are typical of the class.

7. The prosecution of separate actions would create the risk of inconsistent adjudications establishing incompatible standards of conduct for defendants. The defendants have acted on grounds generally applicable to the class, thereby making appropriate final injuctive and declaratory and mandatory relief with respect to the class as a whole.

8. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiff knows of no interest of members of the class in individually controlling separate actions.

IV. PLAINTIFF

9. DOROTHY BOYD is a black American. She is the mother of five children and a recipient of public assistance.

V. DEFENDANTS

10. UNITED STATES OF AMERICA was a party to the action, United States of America v. Life Realty, Inc., et al (70 Civ. 964) which resulted in a consent order which, it is claimed, violated the constitutional rights of plaintiff and the class she represents, and their rights to fair and open housing.

11. UNITED STATES DEPARTMENT OF JUSTICE is an executive department of the United States government which acted on behalf of the United States of America in bringing the action, United States v. Life Realty, Inc. et al, and in entering into a consent order which concluded that litigation. The department also has enforcement responsibilities under the Fair Housing Act, 42 U.S.C. §§3601 et seq.

12. JOHN MITCHELL is the Attorney-General of the United States, the chief executive officer of the United States Department of Justice, and the chief law enforcement official of the United States government. Under the Fair Housing Act, 42 U.S.C. §3613, he is authorized to commence actions against those he believes to be violators of the Act, and under 42 U.S.C. §3608(c) he is required to carry out his activities in the housing field so as to affirmatively further the purposes of the Act.

13. THE LEFRAK ORGANIZATION is the title given the organization which controls the real property holdings of Samuel J. Lefrak and his associates in the City of New York. The Lefrak Organization is the landlord of 21,000 apartment

units in the City of New York, boroughs of Brooklyn and Queens.

14. LIFE REALTY, INC. is a domestic corporation with offices in New York City which acts as the rental agent for all of the apartments owned by the Lefrak Organization in the borough of Brooklyn, and most of the Lefrak apartments in the borough of Queens.

THE LEFRAK ORGANIZATION and LIFE REALTY, INC. control the renting of a substantial number of all the City of New York's rental housing stock. They are closely and inextricably tied to the State and City of New York in a variety of ways. First, during the year 1971, The Lefrak Organization acquired real property in an urban renewal area of Brooklyn and intends to develop such property according to plans drawn up by the government of the City of New York and approved by the federal government. Second, THE LEFRAK ORGANIZATION and LIFE REALTY, INC. are subject to the state's regulations of brokers (New York Real Property Law, Article 12-a), of rentals (New York Unconsolidated Laws, Title 23 (McKinney 1961) and New York Regular Sessions Laws, 1971, ch. 371 (McKinney p.507); of conditions in rental units through code enforcement (New York Administrative Code, ch. 26, Title D, (1970 ed); and the granting of a statutory defense for violations of record in summary dispossess proceedings for tenants in general (Real Property Action and Proceedings Law §755; Multiple Dwelling Law §302-a), and welfare recipients in particular (Social Services Law §143(b)). Third, under the consent order, as

amended, which concluded the litigation in United States of America v. Life Realty, Inc. et al., The Lefrak Organization and Life Realty, Inc. agreed to enter into a legally enforceable contractual relationship with the City of New York whereby they would accept guarantees of rent for applicants for apartments offered by the City of New York (Administrative Code of the City of New York, §604-4.0).

VI. CONSENT ORDER

15. On August 6, 1970, an action was commenced under the Fair Housing Act by the United States of America against LIFE REALTY, INC., et al. (70 Civ. 964) in the United States District Court for the Eastern District of New York. This action was concluded by consent order on January 28, 1971. Said consent order permanently enjoined defendants, with regard to certain of their Brooklyn buildings, from:

> Representing to any person, because of race, color, religion or national origin, that any dwelling is unavailable for inspections or rental, when such dwelling is in fact available; and making unavailable or denying any dwelling to any person on account of race, color, religion or national origin. (p. 2, IIIA and B)

Said consent order contains a standard procedure for approval of all applicants for apartments (pp.3-5, consent order). Paragraph V(c)(4) of the consent order sets out a "90% rule" whereby applicants for apartments may be rejected if their

weekly net income does not equal 90% of one month's rent (Copy of consent order attached hereto as plaintiff's exhibit A).

16. On December 22, 1971 the consent order was amended in paragraph V(c)(4) to include a provision requiring rental to those who do not meet the 90% rule but whose "payment of rent shall be guaranteed by a legally enforceable contract by a duly authorized government agency". The amendment was made in response to an administrative complaint filed by plaintiff on August 13, 1971, more fully described in paragraph 22 herein).

VII. FACTUAL ALLEGATIONS

17. DOROTHY BOYD and her five children have been living in three rooms of a hotel without cooking facilities since October, 1970. She has been in desparate need of permanent housing to establish a home for her family. Dorothy Boyd's hotel accommodations are cramped and dirty; for the greater part of her stay in the hotel she received no janitorial or telephone services; her children have slept on cots and have had no area in which to play. Most of Mrs. Boyd's possessions have been in storage because she has had no permanent housing to which she could have them moved. Consequently plaintiff and her family have suffered severe physical and emotional damage.

18. On July 7, 1971, after seeing a copy of the listing required by the consent order herein of vacancies in Lefrak buildings, Mrs. Boyd went to the Life Realty, Inc. office at 1790 Flatbush Avenue, Brooklyn, New York with the intention of renting an apartment.

19. Mrs. Boyd spoke with a Mr. A.P. Cuccia, a rental agent there, who invited her to select a vacant apartment to inspect. Mrs. Boyd chose a five room apartment renting for $265 per month, apartment 5C, at 1035 Clarkson Avenue, Brooklyn, New York, and was told by Mr. Cuccia that she could inspect that apartment.

20. After inspecting the apartment on Clarkson Avenue, Mrs. Boyd found it suitable for her needs, and therefore telephoned Mr. Cuccia to inform him that she wished to rent said apartment. Mr. Cuccia instructed her to bring in her husband's Social Security card and a job reference. When she informed him that she was separated from her husband and was receiving public assistance, Mr. Cuccia replied that she could not rent said apartment because Life Realty, Inc. never rented apartments to public assistance recipients. Mrs. Boyd therefore did not apply for said apartment.

21. On July 7, 1971, Mrs. Boyd's attorney, Ruth Balen, of Bedford-Stuyvesant Community Legal Services Corp., spoke with Gerald Richter, the Lefrak Organization's Vice-President for Management. Mr. Richter confirmed that it was the policy of the Lefrak Organization not to rent to welfare recipients.

22. On August 13, 1971, a complaint was sent to defendant United States Department of Justice on behalf of Dorothy Boyd pursuant to the consent order (p. 7, VIII), alleging a violation of the consent order herein and the Fair Housing Act. On or about August 27, 1971, Mrs. Boyd received a letter from said defendant acknowledging her complaint and advising her that her complaint had been brought to the defendants' attention.

23. On information and belief, the Justice Department and the Lefrak Organization scheduled a conference at which Mrs. Boyd's complaint was to be discussed and which led to the aforesaid amendment of the consent order.

24. In October, 1971, plaintiff sought to intervene in the action United States of America v. Life Realty, Inc., et al. to obtain standing to participate in the conference between the defendants, and to obtain a determination as to whether the consent order prohibited discrimination against welfare recipients; or in the alternative, to the extent that such discrimination against welfare recipients was permitted or condoned by the consent order, to obtain a determination that the order should be amended.

25. On November 4, 1971, plaintiff's motion to intervene was denied by Judge Jack B. Weinstein of this Court, and plaintiff's moving papers were ordered transferred to a new file and given a new index number, with the existing parties deemed served.

VIII. STATEMENT OF CLAIM

26. The consent order, as amended, descriminates against welfare recipients in that it excludes welfare recipients from the opportunity to rent apartments owned and rented by THE LEFRAK ORGANIZATION and LIFE REALTY, INC. This is because neither plaintiff Boyd nor any other welfare recipient can qualify under the "90% rule" described in paragraph 15, as their welfare grants are so small that their weekly income cannot possibly equal 90% of one month's rent in defendant's apartments. Additionally, there is no governmental agency which can or will guarantee their rent payments and thus they cannot qualify under the exception to the "90% rule".

Plaintiff Boyd and other members of the class can, however afford to pay the rents required for many of defendant's apartments because the amount of money allocated by the New York City Department of Social Services for rent for an individual welfare recipient is geared to the actual rent charged by her landlord, up to certain specified limits. Most of the rentals charged by defendants are within the allowable limits of the Department of Social Services thus, the "90% rule" as applied to welfare recipients has no reasonable relationship to their ability to pay the rents demanded by the defendants Lefrak Organization and Life Realty, Inc.

27. The amended consent order also discriminates against blacks and Puerto Ricans in the leasing of property. 75% -

80% of all welfare recipients are black or Puerto Rican. 33-1/3% or more of the total black and Puerto Rican population of the City of New York receives public assistance. 2% or less of the white population of the City of New York receives public assistance. Discrimination against welfare recipients therefore has a pronounced racial effect. Such discrimination results in the segregation of most black and Puerto Rican people into slum areas and undesirable sub-standard housing. It also results in the de facto segregation of the City's public schools and the social ills which follow from segregation in housing and education.

28. The rental policy of defendants Life Realty, Inc. and the Lefrak Organization violates 42 U. S. C. §1982 in that it is in effect, discrimination against blacks in the leasing of property. It violates the Thirteenth amendment to the Constitution of the United States in that such discrimination amounts to a "badge of slavery".

29. The rental policy of defendants Life Realty, Inc. and the Lefrak Organization violates 42 U.S.C. §§3601 et seq., popularly known as the Fair Housing Act, in that it discriminates in the rental of housing because of race and national origin.

30. The rental policy of defendants Life Realty, Inc. and the Lefrak Organization violates the equal protection clause of the Fourteenth amendment in that it is an irrational and

invidious discrimination based on the status of individual as welfare recipients.

31. The rental policy of defendants Life Realty, Inc. and the Lefrak Organization violates the equal protection clause of the Fourteenth amendent in that it results in discrimination based on race and national origin.

32. Defendants UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, and JOHN MITCHELL by endorsing, approving, and participating in the rental policy of defendants LIFE REALTY, INC. and THE LEFRAK ORGANIZATION as set out in the amended consent order have violated 42 U.S.C. §§ 3601 and 3608(c) which requires:

> "All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purpose of this subchapter....[for fair housing throughout the United States["

and 42 U.S.C. §3613 which requires the Attorney General to institute litigation to enjoin discrimination.

33. Defendants UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, and JOHN MITCHELL, failed to conduct their activities and carry out their duties within the constitutional limits imposed by the Fifth and Thirteenth amendments, in that they entered into an agreement with The Lefrak Organization and LIFE REALTY, INC. whereby discrimination against welfare re-

cipients and black and Puerto Rican people in the leasing of housing was permitted, and in that they participated in and approved of such discrimination.

34. The discriminatory policies of defendants Life Realty, Inc. and The Lefrak Organization and defendants UNITED STATES of AMERICA'S, DEPARTMENT of JUSTICE'S, and JOHN MITCHELL'S approval, endorsement, and participation in such discriminatory conduct, and the latter defendants' failure to take affirmative steps to halt such discriminatory conduct have resulted in severe injury to plaintiff BOYD and the other members of the class she seeks to represent. Because welfare recipients have been barred from housing solely on the basis of their status as recipients they have been forced to live in housing accommodations which are substandard, in violation of relevant housing codes, and dangerous to life and health of themselves and their families.

35. No previous application for the relief herein requested has been made before this or any other Court, except by motion to intervene (see paragraphs 24 and 25 herein) in the action entitled United States of America v. Life Realty, Inc.

IX. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court

a. Order that this action be maintained as a class action pursuant to Fed. R. Civ. P. 23.

b. Declare defendants Life Realty, Inc's and the Lefrak Organization's rental policy as set out in the amended consent order unconstitutional as a violation of the Thirteenth and Fourteenth amendments, and illegal as a violation of 42 U.S.C. §1982 and 42 U.S.C. §§3601 et seq.

c. Enjoin defendants Life Realty, Inc. and the Lefrak Organization from exercising any rental policy which has the effect of denying welfare recipients or black or Puerto Rican people the opportunity to rent apartments from said defendants.

d. Declare that defendants United States of America, the United States Department of Justice, and John Mitchell have violated 42 U.S.C. §§3601, 3608, and 3613 as well as the Fifth and Thirteenth amendments in that they have: a) failed to take affirmative steps to prevent the defendants Life Realty, Inc. and Lefrak Organization from promulgating and applying a rental policy which discriminates against welfare recipients and against black and Puerto Rican people, and b) have approved and participated in the adoption and application of such rental policy.

Amended Complaint (Class Action)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

Plaintiff

-against-

LIFE REALTY, INC., et al.

Defendants

- - - - - - - - - - - - - - - - - - X

CONSENT ORDER

Civil Action
No. 70 C 964

I. The Apartment Leasing Corporation of America (Leasing), which manages all the buildings which are listed on Attachment "A" hereto, submits to the jurisdiction of this Court, and warrants to the Court that it has the power and authority to carry out the provisions of those paragraphs of this Order directed to it, subject to liability for contempt for failure to carry out such provisions. Said Leasing consents to be a party-defendant to this action, without amendment of the complaint. Accordingly, IT IS SO ORDERED.

II. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the complaint against the following individuals: Samuel J. Lefrak, Anthony Cuccia and Rheba Gelman, is dismissed against them in their personal capacities, with prejudice as to the allegations with respect to the buildings set forth in Attachment "A" hereto, predating this Order.

III. IT IS FURTHER ORDERED, that Life Realty, Inc., Leasing, their agents, employees, successors[1], and all those in active concert or participation with any of them[2], are permanently enjoined with regard to the buildings in Brooklyn named on Attachment "A", from:

A. Representing to any person, because of race, color, religion or national origin, that any dwelling is unavailable for inspection or rental, when such dwelling is in fact available; and

B. Making unavailable or denying any dwelling to any person on account of race, color, religion or national origin.

- - - - - - - - - - -

1/ For the purpose of this order the term "successors" shall be defined as follows: The successors of Life Realty, Inc. include any person or group of persons who in the future may act as rental agent for any of the buildings in Brooklyn rented by Life Realty, Inc. at the time this decree is entered, unless the ownership of any such building shall be changed in a bona fide arms' length transaction.

Further, for the purpose of this Order the successors of Apartment Leasing Corporation of America shall include any person or group of persons who in the future may act as managing agent for the buildings in Brooklyn listed on Attachment "A" hereto, unless both the ownership and management of any such building in Attachment "A" shall be changed in a bona fide arms' length transaction. The defendants will notify the plaintiff at least thirty (30) days prior to any projected transfer of title.

2/ As used in the remainder of this Order, the terms "Defendant" or "Defendants", or the named defendants, include employees, agents, successors, assigns, and all those acting in concert or participation with any of them.

IV. In order to assure nondiscriminatory assignment of tenants, and to encourage integration of the buildings listed on Attachment "A" hereto, Life Realty, Inc. will

A. Maintain a date and time-punch clock in its rental office in Brooklyn, and stamp every application which is submitted together with a $25.00 deposit, with the date and time of filing;

B. On Wednesday of each week, compile a list of apartments for which Life Realty, Inc. is rental agent, believed to be available for rent, including the size, rent, (specifying whether utilities are included), the address of the building, and the probable date when a new tenant may take occupancy;

C. Display such list of available apartments at all times after it is compiled in a prominent place in its Brooklyn office, and include on the current weekly list all apartments available for rent;

D. Eliminate from said list apartments for which incumbent tenants have reserved orally or in writing since its listing, or for which application with a $25.00 deposit has been received, by striking such apartment from the list. Whenever application is made for any apartment appearing upon the list, the application shall be recorded with the name and race of the applicant as provided for in paragraph E. below, and date and time of filing in a daily log, as more fully set forth below.

E. Maintain for two years from the entry of this decree, as a daily log, all applications filed (retaining the original applications), with the following information:

1. The name of the applicant and his or her race (Black, White or Other) as perceived by the defendants' agents, unless race has been voluntarily furnished by the applicant on a form such as the one attached hereto as Attachment "B";

2. The building, the apartment applied for, the date and time of filing, whether the applicant was accepted or rejected and, if the applicant was rejected, the reason therefor.

F. Accept applications only for specific available units in the Brooklyn buildings appearing on Attachment "A" hereto, and will not take applications which fail to specify a particular unit;

G. Within thirty (30) days of the entry of this Order, mail to every tenant in the buildings listed on Attachment "A" hereto the first list of available apartments to be published pursuant to paragraph B. above, together with a statement that such apartments are available on a first-come, first-served basis (provided that the applicant meets the qualifications set forth in Part V. of this Order), and that similar lists may thereafter be viewed at Life Realty, Inc. offices at 1790 Flatbush Avenue, Brooklyn, New York.

V. The defendants will:

A. Post and maintain in the Life Realty, Inc. offices in Brooklyn, in a prominent place, where it is clearly visible to all applicants, a sign reading as follows:

"UNDER THE FEDERAL FAIR HOUSING ACT OF 1968, ALL APARTMENTS RENTED THROUGH THIS OFFICE SHALL BE AVAILABLE WITHOUT REGARD TO RACE, COLOR, RELIGION OR NATIONAL ORIGIN"

B. Through a joint press release with the plaintiff, or otherwise, communicate to the general public, including members of minority groups, their policy favoring integration in housing;

C. Adopt and implement the following standard procedure for approval of all applicants for apartments:

1. All applicants will indicate upon their applications:

(a) Home address, age, sex, marital status and name of spouse, relative or other person who will live in the apartment;

(b) Employment, address of employer, gross salary, net salary after withholding tax, other income and obligations on installment contracts, conditional sales, bank loans, finance company loans, mortgage loans, payments required to be made on judgments, garnishments, and all other information showing, on a monthly basis, the obligations (in amounts) of the applicant; and the same information, together with the age for any working spouse or other person who will live in the apartment;

(c) The name of any bank in which any or all adult applicants maintain either a checking account or savings account;

(d) Former residence and landlord of all prospective occupants;

2. The information furnished pursuant to paragraphs (a) through (d) above, will be verified by defendants and if it proves accurate, an appro-

priate indication will be made on the application or on an accompanying form as to whether verification has been made;

3. If the applicant is rejected, the reasons for the rejection shall be entered upon the application and the applicant will be informed within five days thereafter of the fact of his rejection;

4. If the information furnished by the applicant has been verified by defendants, and if he has been a satisfactory tenant at his prior residence, and if his net income per week, after deduction of the obligations listed in V. C. 1. (b) of this Order on a weekly basis, proves to be equal to at least 90% of the monthly rental of the apartment for which he has applied, no further investigation shall be conducted, and the applicant shall be accepted or rejected on the basis of information already available. No applicant shall be rejected for failure to have a checking or savings account at a commercial bank, if said failure was truthfully stated by the applicant in his application;

5. If any item furnished by the applicant cannot be verified, or if he has proved to be an unsatisfactory tenant at his prior residence, or if his net weekly income as defined above is less than 90% of the monthly rental, such further and additional investigation may be conducted as may be judged necessary to determine the applicant's acceptability as a tenant, provided only that the extent of such additional investigation may not be determined or affected by the applicant's race, color, religion or national origin.

VI. A. Within thirty (30) days of the entry of this Order, Life Realty, Inc. will mail to each tenant in the buildings known as the West Point, Cornell, Princeton, Purdue, Syracuse, Northwestern and Clarkson Terrace, a notice in the form attached hereto as Attachment "C", and the defendants shall carry out the obligations described in said Attachment "C", which is made a part of this Order by reference.

B. Beginning no more than thirty (30) days from the entry of this Order, Life Realty, Inc. will maintain in its Brooklyn office a weekly "Special List" to be posted on Wednesday morning of each week, showing all those apartments known to be available in any building on Attachment "A" (other than those named in paragraph A. hereof), which will be available for occupancy no less than four weeks from the posting date. This special list will specify the price, size, rental, and whether utilities are included in the rent, and the date on which the apartment will be available for occupancy.

C. The special list described in paragraph B. above shall be available by written application with a $25.00 deposit until 5:00 P.M. of each Friday, exclusively to tenants of the seven buildings named in paragraph A. above, whose occupancy, as determined by lease date, shall have commenced after January 1, 1969 and prior to August 1,

1970. After 5:00 P.M. on each Friday the apartments on the special list shall be incorporated into the general list described in Part IV., paragraphs B. and C. of this Order.

D. Tenants in the aforementioned seven buildings who apply for any apartment on either the special or regular list at least four weeks prior to projected occupancy, and who qualify for said apartment under Part V. C. of this Order, will be released from their lease obligation and permitted to take occupancy of the new apartment without any penalty or sacrifice of security deposit, except in relation to liability for damage to the apartment vacated.

E. The provisions of Part VI. hereof shall terminate after one year from the first posting pursuant hereto, or after fifty (50) families of the named buildings shall have transferred to other buildings pursuant hereto, whichever is sooner.

VII. A. The defendants will, beginning ten (10) days after the entry of this Order, maintain the following records:

1. The log of applications described in Part IV. above, such log to designate tenants transferring pursuant to Part VI. hereof;

2. All applications, whether accepted or rejected, with accompanying credit checks and leases. Defendants will keep these records

available for periodic inspection by the plaintiff's representatives for two years from the entry of this Order.

B. No less than three months and ten days from the entry of this Order, and thereafter at three-months intervals for two years, the defendants will prepare and send to counsel for plaintiff, reports including the following data: The total number of applications received, indicating the buildings for which applications were made; the name, address and race of the applicant; whether or not the applicant was accepted or rejected and, if rejected, the reason for the rejection. Defendants may fulfill their obligations under this paragraph by forwarding to the plaintiff at the prescribed intervals copies of the log which they have kept pursuant to Part IV. of this Order. In addition to the foregoing, the defendants shall mail to counsel for plaintiff, as part of each report, a copy of each special list as defined in Part VI. B. of this Order. All notices and reports shall be addressed to Chief, Housing Section, Civil Rights Division, United States Department of Justice, Washington, D. C. - 20530.

VIII. IT IS FURTHER ORDERED, that whenever any future complaint arises under the provisions of this Order, except where the Government determines that there exists a need for emergency relief threatening the effectiveness of this decree, the Government shall furnish the defendants

the name of the person who made such complaint and a brief description of the nature and substance of the complaint, including the date of the alleged incident and the building with respect to which the complaint was made. Thereafter, the defendant shall have fifteen (15) days from the date notice is received of such complaint and the nature thereof, to investigate such complaint, and if the complain is determined by defendants to be valid, to advise the Government what steps, if any, have been taken to correct the conditions leading to the complaint; or, if the complaint is determined by defendants to be invalid, to advise the Government of the basis for determining the complaint to be invalid, before the Government shall apply to this Court with any motion for an Order to Show Cause or any other motion to compel compliance with this Order. If the Government determines that a situation has arisen threatening the effectiveness of this decree, and that there is a need for emergency relief, notice to the defendants shall be by telephone without the filing of any papers; and the Court, after consulting orally with both parties by telephone, shall decide whether an emergency exists. If the Court determines that an emergency in fact exists, plaintiff may proceed to move for immediate relief without necessity for the fifteen (15) days' notice provided herein.

IX. Two years from the date this decree is entered, or thereafter, the defendants may move to dissolve this Order. If the United States fails to interpose any objection within thirty (30) days of the Notice of Motion, the injunction shall be dissolved and the complaint dismissed without a hearing or further Order of the Court.

X. No costs incurred prior to the date of this Order shall be assessed against the defendants in light of their agreement to take the affirmative steps described in this Order and in the simultaneous extrinsic agreement between the parties to this Order.

XI. The Court shall retain jurisdiction of this action for all purposes.

Dated: Brooklyn, New York,
January 25, 1971.

(S) Jack B. Weinstein
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Without any adjudication of the merits, and without any admission by any party as to the existence or absence of liability, the undersigned apply for and consent to the entry of the above Order.

Amended Complaint (Class Action)

FOR THE PLAINTIFF

Jerris Leonard

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division
U. S. Department of Justice

Edward R. Neaher

EDWARD R. NEAHER
United States Attorney
Eastern District of New York

ROBERT A. MORSE
Chief Assistant U. S. Attorney
Eastern District of New York

Frank E. Schwelb

FRANK E. SCHWELB
Chief, Housing Section
Civil Rights Division
Department of Justice

Miriam R. Eisenstein

MIRIAM R. EISENSTEIN
Attorney, Department of Justice

Richard L. Master

RICHARD L. MASTER
Attorney, Department of Justice

FOR THE DEFENDANTS

Anderson & Allegaert

ANDERSON & ALLEGAERT
Attorneys for Life Realty , Inc.

Goldstein, Gurfein, Shames & Hyde

GOLDSTEIN, GURFEIN, SHAMES & HYDE
Attorneys for Apartment Leasing Corporation of America

Leonard Schoffman

LEONARD SCHOFFMAN
President, Life Realty, Inc.

Irwin Schoffman

IRWIN SCHOFFMAN
President, Apartment Leasing Corporation of America

Amended Complaint (Class Action)

ATTACHMENT "A"

OWNER	ADDRESSES IN BROOKLYN, NEW YORK
Amherst Leasing Corp.	815 - 43rd Street
Annapolis Leasing Corp.	2815 Coyle Street
Arcadia Leasing Corp.	3232 Shore Parkway
Atlantis Leasing Corp.	3235 Emmons Avenue
Bel Air Leasing Corp.	2775 East 12th Street
Belt Parkway Constr. Corp.	2625 East 15th Street
Buick Leasing Corp.	2626 Homecrest Avenue
Citadel Leasing Corp.	1 Prospect Park Southwest
Colgate Leasing Corp.	4411 Church Avenue
Cornell Leasing Corp.	665 New York Avenue
Dakota Leasing Company	2425 Nostrand Avenue
Danbury Leasing Company	388 Avenue X
Dartmouth Leasing Corp.	4114 Ninth Avenue
Delaware Leasing Company	7705 Bay Parkway
District Leasing Corp.	250 East 38th Street
Dodge Leasing Corp.	950 Rutland Road
Dover Leasing Corp.	2375 East 3rd Street
Georgetown Leasing Corp.	170 East 4th Street
Hampton Leasing Corp.	3203 Emmons Avenue
Harvard Leasing Corp.	4190 Bedford Avenue
Hollywood Leasing Corp.	2750 Homecrest Avenue
Iowa Leasing Company	2401 Nostrand Avenue
Kings Highway Property Corp.	3900 Kings Highway
Life Management Corp.	2021 East 41st Street
Minnesota Leasing Corp.	1145 East 35th Street
Montauk Leasing Corp.	3191 Emmons Avenue
National Realty Co.	1640 Ocean Parkway
National Realty Co.	8301 Bay Parkway
National Realty Co.	35 Pierrepont Street
Nautilus Leasing Corp.	2790 Bragg Street
Newport Leasing Company	444 Avenue X
North Carolina Leasing Co.	2501 Nostrand Avenue
Northwestern Leasing Corp.	452 East 96th Street
Oxford Leasing Corp.	288 Bay 38th Street
Plymouth Leasing Corp.	410 Avenue X
Pontiac Leasing Corp.	2611 East 13th Street
Portland Leasing Corp.	2411 East 3rd Street
Purdue Leasing Corp.	450 Rockaway Parkway
Rakfel Realty Corp.	2047 Nostrand Avenue
Rakfel Realty Corp.	2054 Nostrand Avenue
Rakfel Realty Corp.	2064 Nostrand Avenue
Regent Leasing Co.	1035 Clarkson Avenue
Stanford Leasing Corp.	1625 Rockaway Parkway
Syracuse Leasing Corp.	1115 Willmohr Street
Tri Buildings	7410 Ridge Boulevard
Tri Buildings	7420 Ridge Boulevard
Virginia Gardens, Inc.	3502 Kings Highway
West Point Leasing Corp.	333 East 92nd Street
Westport Leasing Corp.	2800 Coyle Street
Wetherole Holding Corp.	295 Clinton Avenue
Wisconsin Leasing Co.	1201 Ocean Parkway

ATTACHMENT "B"

TO ALL APPLICANTS:

In order to promote nondiscrimination in housing in accordance with the Fair Housing Act of 1968, please check one of the following as to your race or national origin, IF YOU CHOOSE TO DO SO.

_____White

_____Black

_____Other

Failure to answer will not adversely affect your chance of getting an apartment.

_____
(Please Print) NAME

ATTACHMENT "C"

TO TENANTS WHOSE OCCUPANCY COMMENCED AFTER JANUARY 1, 1969 AND BEFORE AUGUST 1, 1970:

Dear Tenant:

We would like to offer you on a limited basis the following opportunity. If you desire to move to other of our buildings in Brooklyn, we will allow you to move without any penalty except for property damage to your present apartment. In addition, if you are accepted for another apartment, we will credit you towards the first month's rent of the new apartment to the extent of one month's rent of your present apartment. In other words, you will not have to pay the first month's rent on the new apartment, except to the extent that the new rent is higher than your present rent. However, if the new apartment rental is less than the rent you are now paying, you will receive the difference between the old monthly rent and the new rent for the first month, in cash, as well as your first month's rent free.

This offer applies only to those apartments appearing on lists available at Life Realty Corp., 1790 Flatbush Avenue, Brooklyn, New York, for occupancy not less than four (4) weeks from the date of application. This offer will expire when the first fifty (50) tenants have transferred under its terms, and in any event will expire one year from the date of this letter.

If you have any questions regarding this special offer, call Mr. Howard Jacobs at IL. 9-9021, or Mrs. Rheba Gelman at Life Realty Corp., 1790 Flatbush Avenue, Brooklyn, New York, telephone CL 8-9090.

Very truly yours,

APARTMENT LEASING CORPORATION OF AMERICA.

CONTRACT

BETWEEN

THE UNITED STATES OF AMERICA

and

APARTMENT LEASING CORPORATION OF AMERICA

I. To further a policy of complete nondiscrimination, Apartment Leasing Corporation of America (Leasing) agrees with the United States of America to observe standards of equal maintenance, to which it believes it is presently conforming, for the purpose of avoiding any discrepancies in the maintenance of premises based upon the racial composition of the premises. Leasing voluntarily agrees to the following, in pursuance thereof:

A. "Premises" shall mean the buildings listed in Exhibit #1 attached hereto;

B. Leasing will maintain all the premises under its control subject to all applicable State and local laws, codes and regulations;

C. Leasing will furnish essential services required by such codes and regulations, including but not limited to the following:

(1) Custodial and repair

(2) Heat and light

(3) Painting and decorating, as required by law in halls, lobbies and individual apartments

(4) Boiler maintenance

(5) Elevator

(6) Extermination

D. Leasing will instruct all persons who provide services for it to provide services of equal quality to all buildings in which they operate;

E. Leasing agrees that it will expend for the maintenance of the services described above, sums in the aggregate reasonably comparable in each of said Premises, and without discrimination based upon the racial composition of any building. It is understood that major non-recurring repairs shall be excluded when determining comparability of maintenance;

F. Leasing agrees that representatives of the United States may inspect the premises listed on Exhibit #1 during a period of 30 days beginning six months after the signing of this Contract. If the representatives believe that there are any substantial discrepancies in the maintenance of said premises, they shall report such alleged facts to Leasing. During this 30 day period Leasing shall make available all appropriate books and records that reflect operational expenditures to the United States, for purposes of inspection. In addition to the mentioned rights of inspection, Leasing will furnish to the United States no later than April 15, 1971, operational statistics

which reflect those items enumerated in paragraph 3, for the most recent three-year fiscal period.

G. In the event that the United States believes that there has been a violation of the Fair Housing Act of 1968, the Government may take such action in Federal Court as it chooses. Leasing reserves the right to contend, among other things, that the Fair Housing Act of 1968 does not embrace Federal jurisdiction over discrimination in maintenance.

H. The reporting and inspections provisions stated herein shall expire eight months following the signing of this Contract. The agreement relating to Leasing's obligation to maintain the premises without regard to racial composition of tenants shall remain in force for two years. Thereafter all applicable Federal laws shall continue to apply.

II. Leasing will instruct all of the rental agents in Queens, New York to take the following action within ten days of the signing of this agreement:

A. Post and maintain in each rental office in Queens, in a prominent place where it is clearly visible to all applicants, a sign reading as follows:

"UNDER THE FEDERAL FAIR HOUSING ACT OF 1968, ALL APARTMENTS RENTED THROUGH THIS OFFICE SHALL BE AVAILABLE WITHOUT REGARD TO RACE, COLOR, RELIGION OR NATIONAL ORIGIN"

B. Display in a prominent place in its office a list of apartments provided by Leasing as being available for rental through the agency.

III. Leasing agrees not to assign its contract to manage the premises described herein unless the assignee becomes a party to and assumes the obligations of Leasing under this agreement.

Dated: Brooklyn, New York
1971.

FOR THE UNITED STATES

Edward R. Neaher
EDWARD R. NEAHER
United States Attorney
Eastern District of New York

ROBERT A. MORSE
Chief Assistant U. S. Attorney
Eastern District of New York

Frank E. Schwelb
FRANK E. SCHWELB
Chief, Housing Section
Civil Rights Division
Department of Justice
Washington, D. C.

Miriam R. Eisenstein
MIRIAM R. EISENSTEIN
Attorney, Department of Justice

RICHARD L. MASTER
Attorney, Department of Justice

APARTMENT LEASING CORPORATION
OF AMERICA

By: _____
IRWIN SCHOPFMAN
President

By: _____

EXHIBIT "I"

PREMISES

Citadel	1 Prospect Park
Maine	250 East 38th Street
North Carolina	2501 Nostrand Avenue
Wisconsin	1201 Ocean Parkway
Virginia Gardens	3502 Kings Highway
Colgate	4411 Church Avenue
Atlantis	3235 Emmons
Bel-Air	2775 East 12th Street
Hampton	3205 Emmons
Yaille	2440 East 29th Street
Dakota	2425 Nostrand Avenue
Kings Highway	3900 Kings Highway
Montauk	3191 Emmons
Georgetown	170 East 4th Street
Minnesota	1145 East 35th Street
Iowa	2401 Nostrand
West Point	333 East 92nd Street
Northwestern	425 East 96th Street
Syracuse	1115 Wilmohr
Cornell	665 New York Avenue
Purdue	450 Rockaway Parkway
Dodge/Princeton	950 Rutland Road
Clarkson Terrace	1035 Clarkson

CHASE OUT

ASSIGNMENT

For $10.00 and other valuable consideration the Lefrak Management Company assigns all its right, title and interest to a certain management contract dated October 29, 1964 with respect to the buildings listed as an appendix hereto, to Apartment Leasing Corporation of America which assumes the said contract and agrees to perform it faithfully and diligently according to its terms.

Accepted and agreed to

SAMUEL J. LEFRAK
for the Lefrak Management Company

IRWIN SCHOFFMAN
for Apartment Leasing Corporation of America

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

LIFE REALTY, INC., et al.,

Defendants.
----------x

CIVIL ACTION NO. 70 C 964

AMENDMENT TO CONSENT ORDER OF JANUARY 28, 1971

Upon the report of the parties dated December 6, 1971, a copy of which is annexed hereto, the Consent Decree, entered on January 28, 1971, in this case is hereby amended so that paragraph V, c, 4 shall be:

> 4. If the information furnished by the applicant has been verified by defendants, and if he has been a satisfactory tenant at his prior residence, and if his net income per week, after deduction of the obligations listed in V, c, 1 (b) of this Order on a weekly basis, proves to be equal to at least 90% of the monthly rental of the apartment for which he has applied or his payment of rent shall be guaranteed by a legally enforceable contract by a duly

authorized government agency, no further investigation shall be conducted, and the applicant shall be accepted or rejected on the basis of information already available.

No applicant shall be rejected for failure to have a checking or savings account at a commercial bank, if said failure was truthfully stated by the applicant in his application;

Dated: Brooklyn, New York
December , 1971.

United States District Judge

Amended Complaint (Class Action)

The parties, by their attorneys, consent to the entry of this amendment to the Consent Order.

For the Plaintiff:

ROBERT A. MORSE
United States Attorney
Eastern District of New York

FRANK E. SCHWELB
Chief, Housing Section
Civil Rights Division
Department of Justice

HENRY A. BRACHTL
Assistant United States Attorney
Eastern District of New York

RICHARD L. MASTER
Attorney, Civil Rights Division
Department of Justice

For the Defendants:

GOLDSTEIN, SHAMES & HYDE
Attorneys for Defendants

By: _____
EDWARD BRODSKY
A Member of the Firm

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DOROTHY BOYD, individually, and on behalf of all others similarly situated, Plaintiff, -against- UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF JUSTICE; and its Attorney-General, JOHN MITCHELL; THE LEFRAK ORGANIZATION; and LIFE REALTY, INC., Defendants.	ANSWER Civil Action No. 71 Civ 1433

Defendants The Lefrak Organization and Life Realty, Inc. for their answer to the amended complaint, state as follows:

1. Deny the allegations of paragraph 1, except admit that the complaint purports to seek relief under the statutes therein specified.

2. Deny the allegations of paragraph 2, except admit that the complaint purports to be filed under the statutes specified therein.

3. Deny the allegations of paragraph 3, except admit that the complaint purports to be brought on behalf of plaintiff and all other persons similarly situated.

4. Deny the allegations of paragraphs 4, 6, 7, 8, 13, 2 23, 26, 27, 28, 29, 30, 31, 32, 33 and 34.

5. Deny the allegations of the first sentence of paragraph 5. State that they lack knowledge or information sufficie to form a belief as to the truth of the allegations of the remainder of paragraph 5.

6. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 9, 11, 12, 17, 22 and 35.

7. Deny the allegations of paragraph 10 of the complaint that the consent order entered in the action entitled United States of America v. Life Realty, et al. (70 Civil 964) violated the constitutional rights of plaintiff and the class she purports to represent and their right to fair and open housing.

8. Deny the allegations of paragraph 14, except admit that Life Realty, Inc. is a domestic corporation and acts as the rental agent for certain apartments in buildings in which Samuel J. Lefrak and others have an interest.

9. Deny the allegations of paragraph 15, and refer to the consent order dated January 28, 1971 for its contents.

10. Deny the allegations of paragraph 16, and refer to the amendment to the consent order dated January 28, 1971 for its contents.

11. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18, except admit that on or about July 7, 1971 Mrs. Boyd went to the Life Realty, Inc. office at 1790 Flatbush Avenue Brooklyn, New York.

12. State that they lack knowledge or information sufficient to form a belief as to the truth of the first sentence of paragraph 20, and deny the remaining allegations of paragraph 20.

13. Admit that in October, 1971 in the action entitled United States of America v. Life Realty, Inc., et al. plaintiff sought to intervene, and deny the remaining allegations of paragraph 24.

As and For a First
Affirmative Defense

14. The complaint fails to state a cause of action.

As and For a Second
Affirmative Defense

15. On or about December 22, 1971 the defendants The Lefrak Organization, Life Realty, Inc. and the United States of America entered into an amendment to the consent order of January 28, 1971, a copy of which is annexed to the complaint. Along with the aforesaid amendment to the consent order, the parties submitted to the court a report on completion of their discussions on the welfare issue.

16. Paragraph 2 of the aforesaid report states that the defendants (Life Realty, Inc., Samuel J. Lefrak, d/b/a The Lefrak Organization, Rheba Gelman and Anthony Cuccia) "shall take and consider applications from welfare recipients and shall apply to all applicants the rental standards which are incorporated in Section V of the Consent Order entered on January 28, 1971 in the case, as is proposed herein to be amended".

Answer

17. The defendants have not discriminated against welfare recipients.

WHEREFORE, defendants demand judgment dismissing the complaint together with the costs and disbursements of this action.

GOLDSTEIN, SHAMES & HYDE
Attorneys for Defendants
The Lefrak Organization and
Life Realty, Inc.

By: _____
A Member of the Firm
655 Madison Avenue
New York, New York 10021
Telephone No. (212) 838-370

Transcript of May 18, 1972 hearing before Judge Weinstein re determination of class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

DOROTHY BOYD, individually, and on behalf of all others similarly situated,

Plaintiff,

-and-

INEZ STONEY,

Intervenor-Plaintiff,

-against- 71 CIV. 1433

UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF JUSTICE and JOHN MITCHELL, its Attorney General, THE LEFRAK ORGANIZATION and LIFE REALTY, INC.,

Defendants.

----------x

United States District Court
225 Cadman Plaza East
Brooklyn, New York

May 18, 1972
9:45 a.m.

B e f o r e :

HON. JACK B. WEINSTEIN, U.S.D.J.

GERALD I. METZ, CSR
Temporary Official Court Reporter

Transcript of May 18, 1972 hearing

A p p e a r a n c e s :

RUTH BALEN and CORNELIA McDOUGALD
Attorneys for Plaintiff and Intervenor-Plaintiff

HON. ROBERT A. MORSE,
United States Attorney for the Eastern District of New York
By: HENRY BRACHTL, Esq.
Assistant United States Attorney, of Counsel

Messrs. GOLDSTEIN, SHAMES & HYDE
Attorneys for The Lefrak Organization and Life Realty, Inc.
By EDWARD BRODSKY, Esq., of Counsel
655 Madison Avenue
New York, New York

* * *

Transcript of May 18, 1972 hearing

THE COURT: I will hear you first, Miss Balen.

MISS McDOUGALD: I am going to present the plaintiff's position. I am of counsel.

This, as you know, is two motions, really, one for class action and one for intervention in the action of Boyd v. U.S.A., et al. The motion for intervention has been opposed by no one. None of the defendants and --

THE COURT: Excuse me. Is that right?

MR. BRODSKY: That's right, we are not opposing that application.

THE COURT: Motion for intervention granted.

MISS McDOUGALD: As to the motion for a class action, this motion has been opposed by the Lefrak Organization. It has not been opposed by the Attorney General, the U.S. Attorney.

Now, it's our contention that this case meets all the requirements for class action under Rule 23. I will not go through all the requirements because your Honor is an expert on class action requirements.

THE COURT: Don't assume that. I am not an expert on anything.

Transcript of May 18, 1972 hearing

MISS McDOUGALL: Reading recent articles of yours; I don't consider it a wild assumption. If you want to, I can list them all.

THE COURT: The defendants will take the position that the last article indicates that I am not an expert.

MISS McDOUGALL: Well, at any rate, the class is so numerous that joinder would be impractical of all the members. Prosecution of separate actions by welfare recipients, all treated equally by the policies of Lefrak, would cause inconsistent or run the risk of inconsistent adjudications.

The party opposing the constitution of a class action has taken action on grounds applicable to all the members of the class, all welfare recipients, and injunctive and declaratory relief is appropriate and is requested in this action.

THE COURT: Does that mean you are moving under Rule 23 b(2)?

MISS McDOUGALL: I think that although we meet the other requirements of Rule 23, Rule 23 b(2) is one which I would like most heavily

to rely on for the reason that it's most agreeable to Lefrak in its opposing papers, and in their opposing papers one of their chief objections to the constitution of a class action is what they view as onerous notice requirements, and if the class is constituted under 23 b(2), those requirements would not be necessary.

We feel, however, that it is possible to notify the class if your Honor chooses not to constitute the class under 23b(2), although we think it's appropriate. The welfare recipients in New York City are identifiable. They may be mailed notice with their checks by the Welfare Department. Posters may be placed in welfare centers. The medium may be contacted for announcements. There is considerable flexibility and reasonable notice could be shaped. However, we would think that constituting the action under 23b(2), which is totally appropriate in this area, would avoid that whole question.

Of course, questions of law and fact applicable to all the members of the class do predominate over individual questions which might

arise and, in general, the class action would be the most efficient way to maintain this action.

THE COURT: Is the class now only of blacks?

MISS McDOUGALL: No. I believe the class should be all welfare recipients. The thrust, of course, will be the racial effect of that classification.

THE COURT: Is it all welfare recipients in New York?

MISS McDOUGALL: In the New York City, area, yes.

THE COURT: I am not inclined to do that. I am inclined to take them only in Queens and Brooklyn.

You have no houses in Nassau, do you?

MR. BRODSKY: I don't honestly know.

MR. HOCHBERG: We have under consideration a Mitchell-Llama type housing now in Hempstead. But it's under a low-profit housing company, and I don't know if it will even fall under the Lefrak umbrella. We are going to build it, but I don't think we are going to own it.

THE COURT: You are not going to operate it?

Transcript of May 18, 1972 hearing

MR. HOCHBERG: I don't believe so.

THE COURT: Then it's Brooklyn and Queens.

MISS McDOUGALL: Except that people who live in other boroughs are certainly suitable applicants for housing in Brooklyn-Queens. I mean, they can live anywhere in the city and still want to apply to a house in Brooklyn or Queens.

THE COURT: Does Lefrak have houses in other boroughs besides Brooklyn and Queens?

MR. HOCHBERG: We have no residential property in Manhattan or in the Bronx, on Staten Island.

THE COURT: So it's only as to houses in Brooklyn and Queens.

MISS McDOUGALL: What about the recipients, though? Because with the housing shortage people are willing to change boroughs.

THE COURT: All right, I will consider that. Well, that would also include then people outside the city who want to move into the city.

MISS McDOUGALL: We wanted it to include people in the Greater New York area, people who would be sort of naturally inclined to move in to

housing in New York City. Obviously, the whole nation could be covered because people want to move. I think that's unnecessary and it becomes more diffuse that way and unecessarily diffuse.

Also, the remedy that can be framed in a class action is more appropriate to this situation, where you can provide procedures for monitoring and procedures for enforcement which would not be suitable in individual action.

Furthermore, this simple precedet is not really as beneficial to the members of the class as a court order covering them under which they can seek to enforce their rights.

Now, I will address myself to some of the defendants' other objections to the constitution of the class.

We received their papers at ten after five last night, but I will attempt, anyway, to address myself to it.

They object to the fluidity and size of the welfare population. It seems to me that these are not really valid objections to the constitution of a class. Number 1, very often classes are fluid and yet these groups have been

constituted classes, and as to the size of the group, there are numerous class actions designating black Americans as the class, and certainly that's an enormous and fluid class as well. People are being born into it, dying out of it constantly.

There have been any number of welfare cases which have constituted welfare recipients as a legitimate class, one of which your Honor said on Rosado against Wyman. Welfare recipients are indeed a recognizable group. As a matter of fact, they are recognizable, more identifiable than, let's say, blacks. Their names and addresses are on record with the Welfare Department and in a way they are more ide ntifiable than some other classes that have been constituted.

There are relatively few Lefrak apartments vis-a-vis the size of the class, I think, is also not a proper objection. What we are concerned with is the rights of the class and not the numbers of people who are actually going to be able to be satisfied. Their housing will be opened up to them, and the fact that

it's small in proportion to their numbers, I think, is not relevant. I have dealt with the question of notice at an earlier time. I believe that's all.

MR. BRODSKY: Your Honor, we oppose the constitution of this case at this time as a class action. We don't think that the plaintiffs have made a sufficient showing for a variety of reasons which I would like to cover now.

First of all, your Honor, they have only been able to demonstrate that there are two people thus far in this record who are allegedly aggrieved; that is, Mrs. Boyd and the intervenor whose application for intervention we do not oppose, Mrs.Stoney. There simply is nothing in any of the papers here thus far -- and I am not saying these plaintiffs may not be able to develop it in the future and shouldn't be permitted to have an opportunity to do that as the litigation progresses. But at this point, your Honor, except for allegations of attorneys, there simply is nothing in the record to indicate that there are more than two allegedly aggrieved persons.

Even if you use the argument that our policy had been up until the time that we entered into the modified consent decree -- our policy may have been not to take applications from welfare persons, but there is just no indication here, and I think the burden is on the plaintiffs to demonstrate that there were a substantial number of welfare persons who came to our renting office and attempted to rent apartments in our buildings.

Now, short of that I don't believe that we have a sufficient number, certainly not so great a number as required by Rule 23, to constitute the case as a class action at this moment.

Second, your Honor --

THE COURT: Let me say I don't consider that a persuasive argument. The Court takes judicial notice of the fact that there is a serious housing crisis in the City of New York and that particularly for poorer people the problem of getting adequate housing is a serious one. The Court takes judicial notice that there are many welfare people who are

presently housed in inadequate facilities, in hotels, at great expense to the government and under conditions quite inadequate from their own point of view. The Court has no doubt that the class of people who need housing and would apply for this housing, were it available, is very great. On the basis of size, I simply will not decide the case.

MR. BRODSKY: Then let me cover another aspect of my argument, which is the practical effect at this point of the litigation, of determining that it should be continued from here on in as a class action. In the other kinds of class actions, the securities cases, the commercial cases, anti-trust cases, the plaintiff's attorney nomally comes in and says that his own client hasn't been damaged by very many dollars and, if it's constituted as a class action, it makes economic sense for him to go ahead. Without it, as the plaintiff's attorneys have been saying and as our Second Circuit has been saying, it spells the death knell at that point in the litigation, of continuing the litigation at all either for his own

client or for anybody else.

Your Honor, we simply don't have this here. It seems to me that from, as I understand it, indirect government sources or perhaps other funding, these plaintiffs' attorneys here are prepared to go on with this litigation whether or not we constitute it as a class action at this time. There will be no difference, as I can see it, in the degree, the quality, the manner in which this litigation is going to be conducted whether we decide that it's a class action at this time or not, and at the conclusion of this case, your Honor may decide that it should never have been a class action.

It seems to me that any point along the way here, if there ever does become a necessity for determining that this case should proceed on a class action, we can meet that issue when we get to it.

In addition, your Honor, as a practical matter, you are dealing here with, as far as the private defendants are concerned, absent the government -- you are dealing here with a group of defendants who -- I represent them, but I

think it's fair to say that we are responsible people and there is no doubt, your Honor -- I don't think the Court would have any doubt -- I don't think plaintiffs' counsel would have any doubt -- that whatever your Honor does in this case with respect to Mrs. Boyd and Mrs. Stoney, whatever the final order is, at least, we are going to follow that with respect to this same class of people. We are not going to come back and litigate that for Mrs. Jones and Mrs. Smith when they come along.

So as a practical matter, I don't see the necessity, because the case is going to go anyway, because as a practical matter the relief that these plaintiffs are seeking they are going to get one way or another, whether your Honor says this is a class action or not.

On the other hand, calling it a class action at this time -- I don't know what the plaintiffs really are seeking in terms of notification of these 900,000 people of whom, even if your Honor directed us to put welfare people in our buildings, we could only house -- we have a very, very small number of apartments

available in relation to 900,000 or a million people, obviously.

If you are going to give notice to these people at this point, your Honor, I suggest that it is almost even cruel to do that to the people.

THE COURT: No, I won't. If it's going to proceed as a class action, it will be under 23b(2). There will be no notice.

MR. BRODSKY: Then I won't discuss the notice problem any further, if that's decided.

An additional factor, your Honor. I think that your Honor was either the first or certainly one of the first to take the position that one of the considerations in determining whether or not a case should proceed as a class action is whether or not the plaintiffs have a likelihood to ultimately succeed. I refer your Honor to Dulgard, where I think you may have been the first or one of the first to hold what has now become a mini-hearing on the subject.

Your Honor, what these plaintiffs are seeking -- and I don't think I have to dwell on this point because I think your Honor probably

said it in this record before anybody else. They really want us to treat welfare people better, if I may use that word, than the working poor or anybody else, and there is substantial doubt, as your Honor has expressed, as to whether or not they are going to succeed. I am not going to argue the merits now. I don't know what the plaintiffs plan to do by way of discovery, by way of statistical analysis, by way of arguments on the merits to attempt to persuade the Court, indeed to attempt to persuade us that we have been wrong. They certainly haven't yet, but it seems to me that's an additional reason at this time not to call this case a class action.

Beyond that, your Honor, I am not at all clear, even from the statements this morning, as to what this class would be. The papers, it seems to me, have indicated that they are calling the class, if they have it their way, the class of welfare recipients who are not white, I think that's what their papers say. This morning I think Miss McDougall said --

MISS McDOUGALL: I believe that was an

inartful statement in the brief. You will notice in the complaint, in the pleadings that the class is described as welfare recipients.

MR. BRODSKY: Then if it's all welfare recipients, I suggest, your Honor, we are getting beyond a case of racial discrimination and into a case of discrimination on the grounds of economics, if they are including whites in their class, and, your Honor, I suggest that, for the reasons which I am giving, because there are not going to be inconsistent adjudications here, no notice provision is going to be required, these plaintiffs are going to go on, in any event, and I suggest we are not going to accomplish anything by merely calling this a class action at this point in the litigation.

THE COURT: You are quite right that it's hard to see the advantage of characterizing it has a class action. There are some psychological advantages, I suppose, from the plaintiffs' point of view. There is also a distinct advantage from the Court's point of view in that if we decide adversely to the

plaintiffs, we don't have to decide another case; whereas if we decide adversely to two plaintiffs, we will have to have the case over and over again. That's normally a factor that the defendants will consider. But it is also a matter for the Court. I don't want to have this case coming into the court over and over again. I want it decided.

As I say, one advantage from the defendants' point of view is that a class action terminates the case against the entire class. With an individual action, if it's decided adversely to you, under current collateral estoppel rulings it's decided adversely as to future plaintiffs, but if it's decided in your favor, future plaintiffs can come in.

Now, you have considered that and you have decided the disadvantages outweigh the advantages, and I respect that decision of yours. But I have an obligation to the administration of justice, which I think here is predominating, and, therefore, I rule that the motion to decide this action as a class action shall be granted. A class is a class under Rule 23b(2). The class

consists of all welfare recipients within the metropolitan area who may seek accommodations in buildings owned or operated by the Lefrak interests.

MR. BRODSKY: Just so that I protect my record, if I may, your Honor, first, obviously, I respectfully except to your Honor's ruling. Beyond that, your Honor, as to what you said before about this being binding on other persons, with all due respect to what your Honor said, there is a substantial doubt in my own mind, after reading the applicable cases on the subject, as to whether or not you can really bind anybody if he doesn't have actual notice or at least some kind of reasonable notice of the action. We have decided, at least on the present state of the law, there is so much doubt in this area that we don't think there is any particular benefit to us by having this maintained as a class action.

THE COURT: It's a perfectly understandable position. I think, however, there has been and will be adequate notice of the Court's decision, first through the press, which has

reported this case; second, through the clearing house review which goes out to most welfare lawyers, which has reported the case and probably will report this. You can send this in so it will be reported. As far as I am concerned, it will be binding. The fact that there has been an intervenor already indicates that there has been widespread publicity.

Anything further?

MR. BRODSKY: I take it no other notices are required in any way.

THE COURT: No other notice is required. There has been more than sufficient in my estimation.

Where do we go from here with the case? What are you going to do now with it? Who is going to carry the laboring ore? I don't want two attorneys handling it. I want one attorney.

MISS McDOUGALL: One attorney responsible.

THE COURT: You will make up your mind who is going to handle the case and notify the Court and your opponent by letter. There will be one person handling the case from each side.

What are you going to do with the case, now? Who is going to handle it?

MISS McDOUGALL: I probably will, your Honor.

THE COURT: What's your next step in the case?

MISS McDOUGALL: I really don't know.

THE COURT: You better make up your mind quickly.

MISS McDOUGALL: We will proceed expeditiously.

THE COURT: And let me know what your plan is. I want to know your time table and where you expect to go with the case. I don't want it delayed. If you need a pre-trial hearing to discuss it or a conference, you can have it by telephone or by appearing here in person. I have a loudspeaker phone in my office so that you can set up a telephone conference. If you want a reporter, he will take it in my office and he will, therefore, take everybody's statements. It's not necessary to come down here unless you want to. But I want to move ahead with it.

Transcript of May 18, 1972 hearing

Let the attorney for the defendant know how you are going to proceed with it.

(Hearing Closed.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DOROTHY BOYD, individually, and on behalf of all others similarly situated :

Plaintiff :

: Index No.

IMEZ STONEY : 71-C-1433

Intervenor-Plaintiff :

-against-

THE LEFRAK ORGANIZATION and LIFE REALTY, INC. :

Defendants :

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225 Cadman Plaza East
Brooklyn, New York
December 3, 1973

A trial was held on December 3, 1973 at the United States District Court for the Eastern District of New York on December 3, 1973, beginning at 9:30 a.m.

Before: HONORABLE TOM CLARK
United States District Judge

JOSEPH L. BENEDETTO
Acting as Official Court Reporter

Appearances:

WILLIAM L. REESE, JR., Chief Counsel
Legal Services Corporation
1368 Fulton Street
Brooklyn, N.Y.
Attorney for Plaintiff and Intervenor-Plaintiff
By: RUTH BALEN, Esq.
M. VICTOR GEMINIANI, Esq.
Of Counsel

MESSRS. GOLDSTEIN, SHAMES & HYDE
655 Madison Avenue
New York, N.Y.
Attorneys for Defendants
By: EDWARD BRODSKY, Esq.
EDWIN L. SCHWARTZ, Esq.
Of Counsel

THE COURT: Are all parties ready?

MISS BALEN: Your Honor, in connection with the exhibits marked, I have certain records I want to introduce.

THE COURT: Very well. Proceed. Any objection?

MR. BRODSKY: Your Honor, we are certainly ready for trial, this morning; I do think, however, for the benefit of the Court and for the benefit of ourselves, it's important to note, for the record, that it appears there is going to be, starting early next year, a very substantial change in the way the Welfare Law is going to be administered and the reason I'm telling your Honor that is because, in light of what is, in fact, going to be the change, much of the testimony that you will be

hearing, as I understand it, from the plaintiff's side, is going to be academic because the procedures which the Welfare people are now using are going to change as far as how they treat rents and in other ways and, indeed, although I tried to verify it in the newspapers this morning, I heard a report on the radio this morning that the whole system of two-party checks is going to be changed.

There was a request by Mr. Charles Sugarman, who runs the agency for the City, that landlords be patient until all these changes come into effect.

Now, the reason I'm saying this, your Honor, is because as I say we're ready to go to trial and we think the plaintiff has no case under the old system and under the new system, as we understand it.

Nobody knows how the new system is going to be. The reason I'm telling you, your Honor, and particularly you, you Honor, is there may be a lot of what we're going to do here today and a lot of the testimony you're going to hear which will all be academic because all of this is going to be changed next year.

I thought I would mention that to the Court but I still tell the Court we are, nevertheless, ready to go to trial, if you want to try the case in light of these

circumstances.

THE COURT: Well, I received a call in Chicago, where I was sitting in the Seventh District, and as I understand from him, the Congress has passed an act that is supposed to go into effect or be implemented, at least some time in the winter.

Did you try to get more accurate information?

MR. BRODSKY: Certainly, the Act has been passed. I can give you the citation. The way I understand it, each State will administer it as in the past.

In this State, part of it will be done, the way I understand it under the new law, under what they call a flat rent subsidy for welfare recipients, which is quite different from what they have today, at least in the State of New York, City of New York.

THE COURT: Does it consist of an increase or a new standard or what?

MR. BRODSKY: It's different. It's all different. Some people, I suppose, will get more; some will get less. We don't know how much it's going to be.

I don't think it's a matter of an increase or decrease. As I understand it now, and you'll be hearing their testimony, if we do go on, as I understand it, at least with regard to certain rent parameters, the

welfare recipient doesn't get a part of his total allotment. There is a specific amount. It's not specifically designated but in the check that the person gets every two months there is a specific amount that the person gets for rent, although not specifically designated as such, and that amount is geared to the actual amount that the person pays for rent within certain parameters and there's an application for that and all the procedures and all that is going to be changed, as I understand it.

Under the new law, people will be getting a flat amount for rent no matter how much they pay so, if they pay less for rent, they will have a little cushion for that in that regard.

If they pay more, they will have less of a cushion. The whole thing has changed. As I understand the plaintiff's case, a lot of it and you will be hearing from the plaintiff's witnesses, involves the old procedure, which we are not going to have any more.

I suggest any decision your Honor will make in this case may become academic in two months from now and that's the reason I'm telling you this today because I certainly don't want to become involved in an academic exercise and I'm afraid that's what we're getting into.

THE COURT: Miss Balen?

MISS BALEN: As for declaratory relief for damages for breach of the Fair Housing Act, neither of those claims will become academic, as Mr. Brodsky says, as the result of changes coming up in the future.

As to injunctive relief, we cannot, at this time, know that because the full programs have not been worked out.

You see, the City and State and Federal Government each have a contribution to make in shaping up the final program. Each one makes their distribution.

We do not know how it will affect the welfare recipient, whether injunctive relief should be granted. Just as to the numbers and with sketchy facts, I have found there will still be a large number of public recipients receiving grants equal to the grants now received or in excess of those amounts.

THE COURT: Well, it still appears to me we don't know just what's going to happen. The case has been here now for three years. It appears a little slow to me so my inclination is although I don't want to go through any exercise, my inclination would be to proceed.

MR. BRODSKY: I thought it would be a matter for the Court to put this on the record.

THE COURT: I appreciate it very much and I would appreciate putting it off but under the circumstances it's so conjectural as to what may happen and, evidently, according to what Miss Balen says, there are still facets of the case that still remain and we, possibly, would have to dispose of them so we'll proceed.

MISS BALEN: Your Honor, plaintiff had marked for identification as Exhibit 1, tables from a census publication, entitled "General Social and Economic Characteristics Taken From the 1970 Census on Housing."

This is an official publication of the Bureau of the Census. The tables which have been marked have had their genuineness admitted to and I now ask the Court to take judicial notice of these tables or of the publication.

I offer both.

THE COURT: Do you have any objection?

MR. BRODSKY: Yes, your Honor. We do not object to the authenticity in the sense that we agree Exhibit 1 consists of pages out of what is called here "The General Social and Economic Characteristics" in or about the 1970 census of the population.

We certainly agree these pages-(interruption)

THE COURT: Are out of that document?

MR. BRODSKY: (continuing)...are out of that book. What we object to, your Honor, is the substance of it without proof of what it is.

I think I said this when we had our pre-trial examination that there is authority giving your Honor discretion to take judicial notice, as I understand it, of what is in the census report but you have discretion not to.

We have seen many reports in the newspapers of late about the inaccuracies of the particular census involved and we do object to it on that ground.

THE COURT: Very well. It will be admitted for whatever purpose it serves.

MR. BRODSKY: I missed a word. You it will be admitted for?

THE COURT: For whatever purposes it will serve.

(The census report so described previously marked Plaintiff's Exhibit 1 for identification was marked Plaintiff's Exhibit 1 in evidence)

MISS BALEN: Plaintiff had marked for identification as Exhibit 2, tables from another Census study, entitled "Metropolitan Housing Characteristics," New York,

New York, also from the 1970 Census and an official publication of the Bureau of the Census. The genuineness of the tables have been admitted. I offer the tables in evidence and I ask the Court to take judicial notice of them.

THE COURT: I suppose you have the same objection?

MR. BRODSKY: The same objection.

THE COURT: They will be admitted to the same extent.

(The census report so described previously marked Plaintiff's Exhibit 2 for identification was marked Plaintiff's Exhibit 2 in evidence)

MISS BALEN: Your Honor, Plaintiff had marked for identification as Plaintiff's Exhibit 5, tables in the form of computer print-outs from the Census of Housing, 1970, Census of Housing in the Bureau of the Census; the genuineness of these tables have been admitted.

I ask the Court to take judicial notice of them.

THE COURT: I suppose you have the same objection?

MR. BRODSKY: Yes, your Honor.

THE COURT: The same ruling. It will be admitted for the same purpose.

(The census report so described previously marked Plaintiff's Exhibit 5 for identification was marked Plaintiff's Exhibit 5 in evidence)

MISS BALEN: Plaintiff had marked for identification as Exhibit 3, text and tables from an official City Publication, entitled New York City Community Corporation Areas; the genuineness of the pages marked for identification has been admitted.

I officer them in evidence and I ask the Court to take judicial notice of them.

THE COURT: The same objection?

MR. BRODSKY: Your Honor, this is a little different. I do understand there is some authority for that, that judicial notice may be taken of the census conducted by the Federal Government.

This is quite different. This is a report that was done in March of 1972 by a man named Abraham Burstein who, at that time, I guess, was Director of Economic Research for the City of New York of the Human Resources Administration. There is text in here. There are figures in here, all of which I would object to

without the witness himself. I don't think there is any authority for introducing this kind of a report without the witness.

THE COURT: What do you say to that, Miss Balen?

MISS BALEN: Your Honor, it's an official publication of the case of the City of New York in a memorandum previously submitted to the court.

We have cited numerous cases and statistics, including the Kennedy Park Congress case and a case known as Beame against Lindsay decided in the Second Circuit last year.

Those were cases in which local and state studies were deemed appropriate for judicial notice and we ask the Court to take judicial notice of this study as similar in reliability and accuracy.

THE COURT: It appears to me that it would be admissible. I don't know just what the relevancy of it is, things of that type, but we can pass upon that for whatever it is worth.

(The Exhibit previously marked Exhibit 3 for identification, as described, was marked Exhibit 3 in evidence)

MISS BALEN: Your Honor, plaintiff had marked as Exhibit 4 for identification, texts and tables from

a State of New York study entitled "Characteristics of ADC Families in New York City, 1971."

This is an official publication of the State of New York, New York State Department of Social Service. It is produced pursuant to a requirement of the Department of Health, Education and Welfare and it is produced regularly every two years.

I offer this in evidence and I ask the Court to take judicial notice of it. I'm referring to Exhibit 4.

MR. BRODSKY: Yes. My objection on this one, your Honor, is similar to the one I had for number three. That is, it is not the United States Census. This is a different kind of a report and I don't think this should be admitted without a witness.

THE COURT: Very well. The same ruling. It will be admitted.

(The Exhibit previously marked Exhibit 4 for identification, as described, was marked Exhibit 4 in evidence)

MISS BALEN: Your Honor, plaintiff had marked for identificatinn, as Exhibit 6, a list of vacancies of Lefrak. The genuineness of these lists have been admitted. The truth of them has been stipulated to, with certain exceptions. That is, both parties agree on the

exceptions and under those circumstances, I offer them in evidence.

MR. BRODSKY: Yes. I believe that is right. There is a stipulation with regard to some inaccuracies but, aside from that, we have no objection to that.

THE COURT: It will be admitted subject to the stipulation.

(The Exhibit previously marked Exhibit 6 for identification, as described, was marked Exhibit 6 in evidence)

MISS BALEN: Your Honor, plaintiff would like to make use of depositions of adverse parties in this case. These are Managing Agent depositions.

We have consulted with the opposing party concerning particular insertions we are interested in and I believe they have no objection, except as to relevant items on portions of the depositions and I would like to have them offered in evidence in view of the fact there is no jury.

I ask the Court whether or not you wish to have them read.

THE COURT: I will read them myself later on so I think it will be a waste of time. You will have to give me a mark on the depositions themselves.

MISS BALEN: I believe that has already been done in the copy that's in the court record.

THE COURT: Mr. Brodsky, do you have any objection to that procedure?

MR. BRODSKY: No. I have no objection to the procedure.. There will be some objection on the grounds of relevancy. Also, there will be some objection to one of them as to any policy of the Lefrak Organization.

You will hear in evidence what that policy is. What Miss Balen knows about is hearsay. I don't think it's inaccurate. I just want to be precise. The people or the person who sets policy will be a witness and I think that's where you should get the policy of the Lefrak Organization from rather than from this employee.

That's the nature of the question. She is an employee of Life Realty, Inc. and gave this testimony. There's no problem about that.

THE COURT: What are the functions of this employee? What does she do? What position does she have?

MISS BALEN: She is a rental agent for Life Realty, Inc. and has worked for them for 17 years.

THE COURT: She actually makes approvals of the rentals?

MR. BRODSKY: No, your Honor.

MISS BALEN: No. She does take applications.

MR. BRODSKY: And to some extent, as the depositions show, she screens out those who will not be eligible because their income is too low.

Those, who she thinks are eligible, according to the depositions, they are referred to a credit department and so her role is screening out those who may be ineligible. I don't want to get into a dispute about what is in the deposition because you, yourself, can read that but to be somewhat more precise, as the depositions show and the evidence will show, the only persons Mrs. Gelman (phonetic spelling) will screen out, as Miss Balen says, are those people whose incomes are so far below any kind of a standard that could reasonably be expected to be accepted by the Lefrak people.

Although she just says, "Your income is so low you couldn't be accepted" but if it comes any place within a range, then she takes it and it's processed through a procedure you will hear about and the decision is not made by Mrs. Gelman but within the Lefrak Organization, as you will hear about it.

She does not make any decision about who is an acceptable tenant.

THE COURT: With reference to relevancy, are you going to make your objections now or later or just how do I know which ones you are objecting to?

MR. BRODSKY: It's not really an objection as to relevancy. I think the proper way is, perhaps, after you heard the testimony then you will hear for yourself what Mrs. Gelman's role is.

THE COURT: That's your witness?

MR. BRODSKY: Yes. I don't know exactly what the plaintiff's case is going to be but she is certainly available to us and we may call her.

She is one of the people we told Miss Balen is a prospective witness any way.

THE COURT: Very well. You want to offer these depositions?

MISS BALEN: Yes, your Honor. In the portions indicated, in the copies filed with the Court, I would like to cover them in evidence.

THE COURT: Very well and subject to relevancy and other objections made.

MISS BALEN: The original is filed.

THE COURT: It's in these papers (indicating)?

MISS BALEN: Yes.

THE COURT: You don't have the names of the witnesses on the depositions, do you?

MR. BRODSKY: The names of the two witnesses?

MISS BALEN: Yes.

THE COURT: What are their names?

MISS BALEN: Alvin Moscowitz (phonetic spelling).

THE COURT: And the other?

MISS BALEN: Riba Gelman (phonetic spelling).

THE COURT: Both of these are employees?

MISS BALEN: One is an employee of Life Realty, Inc., Mrs. Gelman and one is an employee of what we call the Lefrak Organization.

THE COURT: Can you make it more specific?

MR. BRODSKY: Yes. Lefrak Management Corporation. Although one of the so-called named defendants in this case is something called The Lefrak Organization, there is no such entity or partnership.

THE COURT: It's a tag, I take it?

MR. BRODSKY: A "tag." That's the best way I heard it put, yes.

MISS BALEN: No. It's more substantial than that. In the offices of the so-called entity it is clearly marked on the portal by them as The Lefrak Organi-

zation.

MR. BRODSKY: The corporation is one of the entities, yes. That's not a named defendant.

THE COURT: Very well. I would just like the names when I go through it.

MISS BALEN: Thank you. I regret to say the first witness is not here. However, there are some exhibits I must have marked and introduced and I wonder if the Court will not object to taking a few minutes so the testimony is not interrupted.

THE COURT: Very well. Why isn't the witness here?

MISS BALEN: All I know is the first witness is Dorothy Boyd, the Plaintiff, and she lives in Far Rockaway, which is a very long subway trip.

THE COURT: You told her to be here at 9:30, did you?

MISS BALEN: Yes, your Honor.

THE COURT: You may proceed. Her name is Boyd?

MISS BALEN: Yes. I would like to have marked Plaintiff Exhibit 27, an application for an appointment.

MR. BRODSKY: Which one is it?

MISS BALEN: Shirley Lee (phonetic spelling). It's already marked in the big pile.

(The application of Shirley Lee was marked Plaintiff's Exhibit 27 for identification)

MR. BRODSKY: I just want to see it.

(The Court Clerk handed a paper to Mr. Brodsky which was returned)

MISS BALEN: For Exhibit 21, I submit the application of Mrs. Dosett.

MR. BRODSKY: I might just say I looked at the exhibit to save time later. The copy Miss Balen has is not complete.

The bottom line, apparently, the Xerox didn't take, the bottom line. I suppose we should substitute it.

MISS BALEN: For our purposes, we're only interested to the point of the signature.

MR. BRODSKY: I don't think you would want it twice. I think you would want the whole signature.

THE COURT: I don't know. It might depend on the last line.

MISS BALEN: The document has already been marked as Plaintiff's Exhibit 24 in a group of applications and a better copy has been marked but for the purpose of our witness, it's in a large pile which would

be awkward to refer to.

THE COURT: Don't you think we should have a complete exhibit rather than the one that has all the lines on it? Xerox has a habit of leaving lines.

MISS BALEN: Very well. I will use the ones that are marked. I'll take the two of them.

THE COURT: You can go ahead and use those and substitute those later so we don't have to go through that exercise.

(The application of Mrs. Dosett was marked Plaintiff's Exhibit 21 for identification)

MISS BALEN: A Brooklyn map is offered as Plaintiff's Exhibit 28 for identification.

(A Brooklyn map was marked Plaintiff's Exhibit 28 for identification)

A Queens map is offered as Plaintiff's Exhibit 29 for identification.

(A Queens map was marked Plaintiff's Exhibit 29 for identification)

MR. BRODSKY: I'm not aware of what these are, your Honor.

THE COURT: I'm not either.

MR. BRODSKY: I don't understand why they are

being offered.

MISS BALEN: In the course of preparing witnesses, we felt they would be more comfortable if they had these.

THE COURT: You will have the necessary testimony and now you are just marking them?

MISS BALEN: Yes. I have one more exhibit to offer in evidence.

THE COURT: Very well. Has it been marked?

MISS BALEN: Yes, your Honor. It's Plaintiff's Exhibit 4 (sic) for identification. It consists of 20 applications or groups of applications, rather, of public relief assistance recipients between December of '71 and January of '73.

These applications have been supplied by the defendants and I believe it was their suggestion they be offered in evidence rather than in a summary of the contents of the applications, which has been requested in a request for admissions.

THE COURT: Any objection, Mr. Brodsky?

MR. BRODSKY: No. I think you called it the wrong number.

MISS BALEN: There are 20 separate stacks.

MR. BRODSKY: I thought you said "4."

MISS BALEN: I mean 24. I offer these in evi-

dence.

MR. BRODSKY: No objection.

THE COURT: Mark them Plaintiff's Exhibit 24 now in evidence.

(Exhibit 24 previously marked for identification consisting of 20 groups of applications, as described, were marked Exhibit 24 in evidence)

MISS BALEN: I'm sorry, your Honor, for this delay. I'm terribly sorry. Would it be appropriate to have a recess so early in the trial?

THE COURT: Do you have a report from the lady witness?

MISS BALEN: No, your Honor. I was with her on Saturday.

THE COURT: She is the Plaintiff?

MISS BALEN: Yes. The Intervenor Plaintiff will be here in five minutes and we will be willing to proceed with her first.

THE COURT: So you suggest we take a recess?

MISS BALEN: Yes, your Honor, and I'm terribly sorry.

THE COURT: I don't want to be decrepit about it but don't let it happen again. We will take a recess

until I hear from you.

(Whereupon, the Court was in recess from 10:20 a.m. to 10:40 a.m.)

MISS BALEN: Once again, I apologize to the Court for the delay.

We call, as the first witness, the Intervenor Plaintiff, Inez Stoney.

INEZ STONEY, after having been first duly sworn, testified as follows:

THE COURT: Give your name to the stenographer.

THE WITNESS: Inez Stoney.

DIRECT EXAMINATION BY MISS BALEN:

Q What is your address, Mrs. Stoney?

A I live at 557 Empire Boulevard.

Q Do you have children?

A Yes.

Q How many?

A Four.

Q What are their ages?

A The oldest is 13. She's a girl; a boy, 11; a girl, 6; and a girl, 3.

Q What is your source of income?

A I'm a welfare recipient.

Q How long have you been living at your

present address?

A For nine months.

Q Is that an apartment?

A Yes.

Q Where did you live before you moved to Empire Boulevard?

A I lived in the Granada.

Q How long did you live there?

A For three months.

Q Where is the Granada Hotel?

A It's at Ashland Place and Lafayette in Brooklyn.

Q Where did you live before the Granada Hotel?

A 153 Saratoga Avenue.

Q How long did you live there?

A For eight years.

Q Did there come a time, Mrs. Stoney, when you decided to move from Saratoga Avenue?

A Yes.

Q When did you make that decision to move?

A Well, it was when I got burned out. I had to move but before that I also had to find an apartment.

Q For how long before you were burned out did you try to find an apartment?

A Over a year.

Q Why did you decide to move, Mrs. Stoney?

MR. BRODSKY: Objection, your Honor.

THE COURT: You may proceed.

Q Did you take any steps to locate apartments after you decided to move?

A To move from 153 Saratoga Avenue?

Q Yes.

A Yes. I was out looking for an apartment every day.

Q How did you go about looking for an apartment?

A I bought newspapers and I went to real estate people and I asked friends about an apartment and I just walked and looked.

Q How often did you do this?

A I did it every day.

Q Did you ever refuse an apartment that was offered to you?

MR. BRODSKY: Your Honor, if this doesn't involve anything that has to do with any of the defendants, I object to the question.

THE COURT: I suppose you should make it a little more specific, Miss Balen, if you can.

MISS BALEN: I believe that the efforts Mrs. Stoney made to find an apartment are relevant to the cause of action in that they show or support the allegations of discrimination that we're making.

THE COURT: She has already testified she made every effort every day.

MISS BALEN: It would also be relevant to that point as to whether she was reasonable in her search, of course, evaluating it in her efforts, whether she refused and/or whether she was refused apartments.

THE COURT: You haven't asked her about whether she was refused.

MISS BALEN: This is the line of questioning, your Honor.

THE COURT: You may proceed.

MR. BRODSKY: Your Honor, if I just may, for the record, note I do think it is objectionable and inadmissible as to the efforts Mrs. Stoney may have made with regard to other

landlords. We have nothing to do with other landlords and to the extent that she was involved with other landlords, I think it is inadmissible in this particular proceeding.

THE COURT: Well, for whatever it is worth, I will admit it and when it comes to its consideration, I will eliminate those parts that should not be.

Q Mrs. Stoney, did you ever refuse apartments that were offered to you while looking for apartments?

A Yes.

Q Under what circumstances did you refuse apartments?

MR. BRODSKY: Your Honor, I just object to this line of questioning. I don't think I want to get up and object to every one.

At this time, can I have a continuing objection?

THE COURT: Yes. I will eliminate any of it that is inadmissible. You may proceed.

Q Under what circumstances, did you refuse apartments that were offered to you?

A I refused apartments because they were not living conditions.

MR. BRODSKY: I object to the characterization, your Honor.

THE COURT: I don't know what she said that there "were not living conditions." What is the meaning of that?

Q Could you explain what you mean by "living conditions"?

A Well, the apartments, the paint was coming off the wall. It was very filthy. In some of them, the bathroom was broken.

Q How many of these apartments did you refuse?

A About 10 or 15.

Q Were you ever refused an apartment during the same period of time?

A Yes.

Q Under what circumstances?

A Because I was a welfare recipient.

MR. BRODSKY: I object to that, your Honor.

THE COURT: What is your grounds? What grounds do you have?

MR. BRODSKY: On the grounds, your Honor, that the conclusion that she was refused an apartment, for that reason, with the witness

stating conclusions without giving or having the landlord here to testify as to why the woman was excluded as a tenant in the building. She is making a conclusion based on what, I don't know, and the landlord is involved, whoever they may be. All of them are unnamed, are not here to be cross-examined by me so I can't find out why she was excluded so that's irrelevant.

She may have been excluded for economic reasons, a thousand other reasons. I have no way of knowing this.

THE COURT: Perhaps you could do that on cross-examination and develop that.

MR. BRODSKY: Maybe.

Q How did you know that you had been refused because you were a welfare recipient?

A Because when I told them I was on welfare, they didn't want welfare.

Q Where were the apartments you referred to located?

A Mostly in Flatbush, in Brooklyn.

Q Did there come a time when you learned there were vacancies in Lefrak Apartments?

A Yes.

Q When did you learn that?

A Around March of '71.

Q Do you wish to correct that, Mrs. Stoney?

MR. BRODSKY: I object to that, your Honor.

Q March of what year, Mrs. Stoney?

A March of 1971

Q How did you learn about the vacancy in Lefrak Apartments?

A I have a friend who told me that they apartments, that she was living in one of their buildings, they had very nice apartments and I should try there.

Q Did you inquire about the vacancy?

A Yes.

Q When did you make that inquiry?

A It was in March, at the same time.

Q Of what year?

A '71.

Q How did you go about making that inquiry?

A Well, I phoned because the apartment was available next door to her and so I asked about the apartment.

Q Where?

A The Life Building, really, on Flatbush

Avenue.

Q Did you speak to anyone at Life Realty?

A Yes. I spoke to Miss Gelman.

MR. BRODSKY: Your Honor, I'm going to object to any conversation on the telephone where a person the witness calls Miss Gelman speaks. Obviously, the witness did not know Miss Gelman in the past, couldn't possibly identify her voice on the telephone and I think under the applicable cases any telephone conversation with a person not known to the witness is inadmissible.

MR. BRODSKY: Your Honor, self-identification would be a proper means of supporting the voice identification.

This line of questioning, in particular, shows what the witness did and is necessary in the facts presented by her.

THE COURT: She testified that she telephoned the company and asked for Miss Gelman. Is that correct and a lady came on the phone and she said "Miss Gelman"?

MR. BRODSKY: She testified she called and a lady came on the phone. She didn't ask

for Miss Gelman. She wouldn't have known the name.

THE COURT: I believe it is sufficient. She can prove whoever she talked to was Miss Gelman. Couldn't she testify to that?

MISS BALEN: Yes, your Honor. I intend to do that.

THE COURT: Very well. Proceed.

Q How did you know you were speaking to Miss Gelman?

MR. BRODSKY: Objection, your Honor.

THE COURT: She can say how.

A My girl friend had told me.

MR. BRODSKY: Excuse me. I object to what her girl friend told her. That's objected to.

THE COURT: Her girl friend gave her the telephone number. That's all she said.

Q When you telephoned Life Realty and you spoke to someone, how did you know you were speaking to Miss Gelman?

A My girl friend told me to ask for Miss Gelman.

MR. BRODSKY: I object to that and ask that

it be stricken.

THE COURT: Just say what you said and don't cite what someone told you.

Q Did you have a conversation with the person you were speaking with?

A Yes.

Q What was that conversation?

MR. BRODSKY: I object to it, your Honor.

MISS BALEN: Your Honor, it is essential to show what she did next and why.

THE COURT: You may proceed.

Q What was that conversqtion you had with that person on the telephone?

A I told her I called about an apartment and I asked if she had a vacancy and she said, "Yes," and I told her, "I'd like to have a 5-room apartment" and she told me to come into the office.

Q Did you ask her any other questions at that time?

A Yes. On the telephone. I asked her did she rent to welfare. She said, "Yes," she rents to anyone who could meet the demands.

Q Did you ever talk to anyone at Life Realty or go to Life Realty after this conversation?

A Yes.

Q Where was the place you went to?

A Would you repeat that please?

THE COURT: What is the address?

THE WITNESS: The apartment?

Q No. Where did you go after the telephone conversation? Where was the Life Realty office?

A It was on Flatbush Avenue.

Q When you went there, did you speak with anyone?

A Yes.

Q Do you know who you spoke to?

A I spoke to a lady and she said she was Miss Gelman.

Q Did you have a conversation with Miss Gelman?

A Yes.

Q What was that conversation?

A I told her I came in to find out about a 5-room apartment and I told her I would like to see one if she had it and she said, "Yes," she had a 5-room apartment and I asked her where and she said it was at 333 East 92nd Street.

Q Did she ask you any questions while you were in her office?

A No. Not at that time.

Q Were you permitted to inspect the apartment under discussion?

A Yes. She gave me the super's name and told me to go over and tell him to show me an apartment 4-T.

Q Do you remember what the rental was for that apartment?

A $295. a month.

Q Did you inspect the apartment 4-T on East 92nd Street?

A Yes. I did.

Q When did you go there?

A It was the next day.

Q After you had been to Life Realty?

A Yes.

Q Did you decide anything about the apartment after you had seen it?

A Yes. I decided that I liked the apartment. It was very nice and I would like to have it.

Q Did you make any attempt to rent the apartment?

A Yes. I went back to her and I told Miss Gelman, "I like it and I would like to rent it" so she told me, she said it was $295. a month so I told her

I was a welfare recipient and she said, "Well, I have to have a co-signer before I could rent the apartment."

Q Did she explain what she meant by "co-signer"?

A No.

Q Did you and Miss Gelman have any further conversation on that occasion when you were at Life Realty?

A No.

Q Did Miss Gelman give you anything when you were in her office at that time?

A No. She did not.

Q Did you make any effort to obtain a guarantor, to obtain a co-signer?- I'm sorry.

A What's the question?

Q Did you make any effort to obtain a co-signer?

A Yes.

Q What efforts did you make?

A I asked a friend of mine would he co-sign for me but he was only making $200. a week so I took him in and I told Miss Gelman so she said he had to be making $300. a week in order to co-sign.

Q When did Miss Gelman tell you this?

A It was a few days later.

Q Did you or your co-signer fill out an application, finally, for the apartment?

A No.

Q Did you make any further attempt to rent the apartment?

A Yes. I asked her, "Should I leave a deposit?" She said, "No," I had to have a co-signer but when I went back with the co-signer, she said he wasn't making enough money, that I still couldn't rent the apartment.

Q Which time was that that you went back?

A It was the second time I had gone back to see her.

Q Was that the end of your attempts to rent the apartment?

A No.

Q You made a further attempt?

A Yes.

Q What was that?

A Well, I waited a few days and I asked my girl friend would she call for me to see if the apartment was still ~~amcant~~ so she called.

MR. BRODSKY: I object to this, what her

girl friend did, your Honor, if she testifies as to whether or not she called but couldn't testify as to what she said.

MISS BALEN: As to what she did next, the witness did next?

THE COURT: Yes.

Q Would you proceed please?

A So I called my girl friend - I told my girl friend to call for me - (interruption)

MR. BRODSKY: Excuse me. I object to what her girl friend said, your Honor.

MISS BALEN: We don't offer that in evidence, to offer as the proof of it, only to show what the witness did next.

THE COURT: As a course of conduct in an effort to try and rent?

MISS BALEN: Yes, your Honor.

THE COURT: Very well. You can proceed. I will eliminate whatever shouldn't be admitted.

A My girl friend said the apartment was still vacant.

Q Did you do anything after that to rent the apartment?

A Well, the next day I went back to Life

Realty to see if I could rent the apartment.

Q What happened at Life Realty this time that you were there?

A I had a co-signer but I had found one making $300. a week so I went back to see if I could get the apartment but when I got there, she told me the apartment had been rented the day before.

Q How long after your first visit to Life Realty were you told the apartment had been rented?

A About three or four days after.

Q I show you Plaintiff's Exhibit 9 marked for identification and I ask you if you recognize it (indicating).

A Yes.

Q Could you tell us what it is?

A It's a notice to a welfare recipient.

Q Had you ever seen it before?

A Yes.

Q Under what circumstances?

A Miss Gelman gave me a small strip of paper with the same reason.

Q Had you ever seen that paper before?

A Yes.

Q Is that the paper Miss Gelman gave you?

A Yes. It is.

MISS BALEN: Thank you. I offer this exhibit in evidence, your Honor.

THE COURT: Any objection?

Admit it.

(Plaintiff's Exhibit 9, a paper previously described, previously marked for identification, was marked in evidence)

Q Mrs. Stoney, how did you feel about what happened at Life Realty?

MR. BRODSKY: I object to that, your Honor.

MISS BALEN: Your Honor, it goes to the damages of the plaintiff.

THE COURT: That is rather a broadside as to how did she feel. Couldn't she develop it with more specificity?

Q Mrs. Stoney, were you satisfied with the refusal of Life Realty to rent the apartment to you without a co-signer?

MR. BRODSKY: I object to that, your Honor.

THE COURT: I think you should try to develop it as to what effect it had upon her. Things of that type would be a little more specific

rather than asking her how she feels, what she feels.

MISS BALEN: I believe that is an element in the cause of damages.

THE COURT: How she felt?

MISS BALEN: Yes, your Honor.

THE COURT: You would have to connect it up, wouldn't you, in some way? It would be better to have what effect this particular conduct had upon her.

Q Mrs. Stoney, what effect, if any, did what Life Realty do have on you?

MR. BRODSKY: I object to that, your Honor.

THE COURT: She can answer.

A I felt very bad because I liked it and I was in desperate need of the apartment and I wanted to rent it but I felt they didn't want to rent it to me because I was a welfare recipient and because of my race.

Q Mrs. Stoney, why did you move from Saratoga Avenue?

MR. BRODSKY: I object to that, as to why she moved from Saratoga Avenue. There's no reference to Lefrak.

MISS BALEN: Your Honor, Mrs. Stoney was living at Saratoga Avenue at the time in question.

THE COURT: Are you going to connect it up with Lefrak?

MISS BALEN: Yes, your Honor.

THE COURT: Very well. Subject to connection.

MR. BRODSKY: May I know how? It's just so inconceivable to me. May I know how it is going to be connected to Lefrak?

THE COURT: I don't know.

MISS BALEN: Your Honor, I don't believe it necessarily has to be connected to Lefrak.

MR. BRODSKY: That's different.

MISS BALEN: During the period of time she was residing at Saratoga Avenue and subsequent to the rental she testified to, events occurred which were relevant to our claims, especially those claims for damages.

THE COURT: She moved from the apartment? Is that what you are asking about?

MISS BALEN: Yes.

THE COURT: As to why she moved?

MISS BALEN: Yes.

MR. BRODSKY: And I object to it, your Honor. It has no connection to it whatsoever.

THE COURT: I don't know what the answer is supposed to be. I gather it has some connection with the overall allegations of the complaint, which was she wasn't able to get an apartment from Lefrak.

MISS BALEN: That's exactly it.

THE COURT: Assuming it to be true and instead of striking it out, I'll decide at a later time. I will admit it.

Q Why did you move from Saratoga Avenue?

A There was a fire and we got burned out completely.

Q Did you go to the Granada Hotel after the fire?

A Yes.

Q Were you there with the children in the hotel?

A Yes.

Q Could you describe the rooms in that hotel?

MR. BRODSKY: I object to it, your Honor.

THE WITNESS: I haven't described it.

MISS BALEN: As to the rooms she had in the hotel?

THE COURT: She may proceed.

A Well, I had two rooms and a bath, which was supposed to have been a kitchen and a half.

THE COURT: I don't know what this has to do with the case but since we don't have a jury, I'm going to be very liberal and leave it in.

MR. BRODSKY: I hope your Honor understands I have to object to protect the record. I know there is no jury here but most of these questions are so far beyond this case.

THE COURT: Some of them might not have any connection at this time but I will wait until all the testimony is in and at that time I will give it the proper weight it should receive.

Meanwhile, if you want to, you can make objections. I am not telling you you can't make objections.

MR. BRODSKY: I appreciate that.

THE COURT: If you would like to have a continuing objection, it is all right with me.

Q Could you describe the rooms in the hotel?

A I had two rooms, a bath and a kitchen and the conditions were very bad. Paint was falling and they were so cold me and my four kids had to sleep together.

My kids would go out. They would have to walk back up because the elevators were broke and I was living on the 14th floor.

Q What is the rent you are now paying, Mrs. Stoney, for your apartment at Empire Boulevard?

A $225. a month.

MISS BALEN: No further questions of this witness.

THE COURT: Very well. You may proceed, Mr. Brodsky.

MR. BRODSKY: Thank you, your Honor.

CROSS-EXAMINATION BY MR. BRODSKY:

Q Mrs. Stoney, before you intervened in this case, did you read the intervenor-plaintiff complaint, which I am showing you here (indicating)?

A Excuse me. Would you repeat the question?

Q Did you read the document or copy of it, which I have just handed to you, before you actually became a party to this litigation?

A No.

Q As part of this, Mrs. Stoney - may I stand here (indicating) a minute, please?

THE COURT: Sure.

Q At page 21 - (interruption)

MISS BALEN: What is he referring to there? May I know?

THE COURT: The intervenor's complaint.

MR. BRODSKY: The intervenor's complaint.

Q As part of it, in paragraph 21, it states that when you, and I quote, "When Mrs. Stoney asked Miss Gelman whether a guarantee of a lease by the Department of Social Services would be sufficient, Miss Gelman replied it would not acceptable."

Do you see that there?

MISS BALEN: Your Honor, we are willing to stipulate that statement is untrue.

MR. BRODSKY: I would like to get it from the witness, your Honor.

THE COURT: You may proceed.

Q Did you just read that statement, Mrs. Stoney?

A Yes.

Q Is that a false statement?

A It is a false statement.

Q Is the fact of the matter, Mrs. Stoney, that

Miss Gelman told you the contrary, that a guarantee by the Department of Social Services would be acceptable? Isn't that correct?

A No. She did not. She kept telling me I had to have a co-signer.

Q I want to just go back to this statement and I'm not talking about co-signers now. I'm talking about this statement in your complaint and whether or not it is true that Miss Gelman told you that a guarantee of the Department of Social Services would be insufficient?

Is that statement false? That statement is false, is it not?

A Well, it is false.

Q When you spoke to your friend, you say, who told you about the possibility of an apartment being available in the Lefrak Building - remember your testimony on direct?

A Yes.

Q What is the name of your friend?

A Christine Williams.

Q Christine Williams?

A Yes.

Q Where does she live?

A 490 Rockaway Parkway.

Q Where did she live at the time you spoke to her?

A She was living there.

Q Is that a Lefrak Building?

A Yes.

Q Have you visited you friend in the building?

A Yes.

Q Is your friend black?

A Yes.

Q Are there other black tenants in the building?

A Well, there are now. I don't know if there were at that time.

Q Well, what is your best recollection?

A I think there were.

Q You think there were?

A Yes.

Q Would you say the building is an integrated building?

MISS BALEN: Your Honor, I object.

THE COURT: Well, she's inspected it and knows, if she knows what integrated means.

MISS BALEN: Your Honor, I submit "inte-

grated" is a word subject to many interpretations. Just what is an integrated building? At what number would you say it is integrated?

THE COURT: I would say he would have to develop his standard.

MR. BRODSKY: All right.

Q When you visited your friend in the building, did you see other black people coming in and out of the building?

MISS BALEN: Your Honor, I object. That would not show they were residing there. It's an irrelevant question.

THE COURT: It would show people visiting and things of that kind. I will admit it for what it is worth.

MR. BRODSKY: Your Honor, I might say I didn't think there would be any dispute about this and I thought we could move along much quicker on this issue.

In Miss Balen's brief, referring to the Lefrak Organization, on page 34, she stated and I quote, "The Lefrak Organization is a major landlord in New York City which rents, as of January 31, 1973, 15,484 apartments in New York

City. These apartments..." and this is a quote from Miss Balen's brief, "...are for the most part located in integrated buildings."

So, I really didn't think we were going to have a dispute on the question of whether or not these buildings are integrated buildings.

MISS BALEN: Though such statements appear in the brief, it does not indicate that this witness is the appropriate one to have that evidence indicated.

THE COURT: She indicated that she saw it. She can tell me what she saw going in and out of the building. Then she knows who lived there, from her own knowledge, who was black with testimony along that line as to what she knows of her own knowledge but she can't testify, I don't think as an expert. She's not qualified as an expert on integration.

Q At least, your friend you testified about was black, was she not?

A Yes.

Q She lived in the building at the time?

A Yes.

Q Did you know any other people who lived

in the building?

A No.

Q Did you see black people coming in and out of the building when you went in the building?

A Yes.

Q Other black people, other than your friend?

A Yes.

Q Now, the building that you went to, where was it located, the one Miss Gelman had recommended to you?

A It was at 333 East 92nd Street.

Q In Brooklyn?

A Yes.

Q And you did inspect the apartment, did you?

A Yes.

Q When you went and inspected that apartment, did you see other black people coming in and out of that building?

A Yes.

Q Do you know anybody who lived there at that time?

A No.

Q Have you ever, since that time, met

people who lived there?

A No.

Q You had testified, at the beginning of your direct examination, that you had looked for many apartments and, over my objection, you testified that some of the apartments you rejected because they were filthy, the paint was pealing? Remember that testimony?

A Yes.

Q This was not true, was it, of the apartment in the Lefrak Building that you inspected; is that correct?

A No. It wasn't.

Q All of the apartments that you testified about were not in any of the Lefrak Buildings. Do you remember that?

A Would you repeat it?

THE COURT: Her testimony was as to apartments she rejected, as I recollect it. I don't think she testified they were Lefrak.

MR. BRODSKY: That's all I'm trying to establish.

Q Is that correct that none of them were Lefrak Buildings?

A I don't know.

Q To your knowledge, were they Lefrak?

A No.

Q Were any of them recommended to you by Life Realty?

A No.

Q What was the name of the potential co-signer that you said you had when you came to Life Realty?

A His name was Eddie Herbert.

Q Where did he work at the time?

A He worked at DuMont Realty in Flatbush Avenue, Brooklyn.

Q As a what?

A A broker.

Q And you said you had a second co-signer?

A No.

Q You had one?

A Yes.

Q And he made, you say, two, three hundred dollars a week?

A Yes.

Q Maybe I was wrong but in your direct examination, you came back with a second co-signer who made $300. a week?

A No.

THE COURT: I thought you testified before that you got another co-signer who made $300. a week. Is that right?

THE WITNESS: No.

THE COURT: I misunderstood your testimony?

MR. BRODSKY: I think you did.

Q If you so testified on direct, that was incorrect? Is that correct?

A That's right.

MISS BALEN: She did not so testify.

MR. BRODSKY: The record will show what she testified to and my recollection is in accordance with my recollection of the testimony.

THE COURT: What did you understand, Miss Balen?

MISS BALEN: I believe she was narrating the last efforts she made and she began by saying, "I had been told to get a co-signer and I had not been able to get one."

THE COURT: I understood her to say that she did obtain a co-signer who earned $300. but the apartment had been rented. Therefore, it was not available.

MR. BRODSKY: That was my understanding too,

your Honor. Perhaps I wasn't listening well but I thought I was.

THE COURT: I'll review it later. In any event, it's not true.

Q When you walked into the office of Life Realty, was any suggestion made to you by anybody that they would not rent to you because you were black?

A No.

THE COURT: Would you tell me what is the relationship between Lefrak and Life Realty?

MR. BRODSKY: Your Honor, as you will hear from the testimony, this office of Life Realty in Brooklyn represents apartments in Lefrak Buildings which are in Brooklyn. That is the relationship, your Honor.

THE COURT: An agency of Lefrak?

MR. BRODSKY: Sort of, not really, but they do as Life Realty, a renting agency, to rent Lefrak Apartments.

THE COURT: Does Lefrak own Life Realty?

MR. BRODSKY: No. The stock ownership is somewhat different. I'm not sure if it's relevant. I'm not sure who owns it, what the breakdown of the stock ownership is .

THE COURT: They operate on other than an agency basis?

MR. BRODSKY: Yes.

Q How much was the amount that you were looking at, Mrs. Stoney?

A At 333 East 92nd Street?

Q Yes.

A It was $295. a month.

Q Now, at the time were you employed?

A No.

Q Were you married at the time?

A No. I've never been married.

Q You've never been married?

A No.

Q What was your source of income at the time?

A Well, I was receiving welfare.

Q Now, how much were you getting from welfare at the time?

A I'm not sure but I think it was around one eighty every two weeks.

Q $180. every two weeks?

A Yes.

Q And you would get that in the form of a check

every other week? Is that correct?

A Yes. Twice a month.

Q Twice a month?

A Yes.

Q When you got the check, there would be no specific amount in it that was for rent or food or clothing or anything else; isn't that correct?

A Yes. It included food and clothing and rent.

Q That is the entire amount that you got?

A Yes.

Q You never got any more?

A No.

Q The question I am asking you is as to a check, when you got it, it was to your order; is that correct?

A Yes.

Q And it was in the total amount of how much?

A $180. I think it was.

Q And there was no indication that the check or in the check or anyplace else, of how much was allotted to rent or food or clothing or anything else?

A Yes. Half of my month's rent was included.

Q Half of your month's rent?

A Yes.

Q In what form was it included in the check?

A Well, I paid $85. a month so I got half of it on the first and half on the 16th.

Q What I'm getting at is this: In the check, itself, it was one check to your order for $180; is that right?

A Yes.

Q You didn't get a separate rent check, did you?

A No.

Q Now, assuming that you did get this amount, from what source would you get getting the money to pay the rent?

A For this apartment at East 92nd Street?

Q Yes.

A Well, I would be getting it from welfare.

Q What I was asking you is: If you had any other source of income at the time?

A No.

MR. BRODSKY: No further questions, your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION BY MISS BALEN:

Q Mrs. Stoney, at which point did the fire occur at Saratoga Avenue?

MR. BRODSKY: May I have an objection to this?

THE COURT: You mean the date, the time?

MISS BALEN: The date.

THE COURT: Which date was it?

A It was November 6th of 1972.

Q On which date had you gone to rent the Lefrak Apartment?

MR. BRODSKY: I think we had all this on direct, haven't we, your Honor?

THE COURT: I thought we did. Maybe she is trying to emphasize it.

A In March.

Q Of what year?

A I think it was '71. I'm not sure.

Q You mentioned that you saw black people coming in and out of the building on Rockaway Parkway?

A Yes.

Q Do you know anything about those people? Did you know them?

A No.

Q Did you know they were living there?

A No.

Q Did you know why they were there?

A No.

MISS BALEN: I have no further questions.

THE COURT: Very well. Mrs. Stoney, you may step aside. You're excused.

(The witness was excused)

MISS BALEN: Your Honor, I regret to say again we are without any next witness.

THE COURT: What are we going to do now?

MISS BALEN: I'm terribly embarrassed and mortified for the delay caused the Court.

THE COURT: Have you heard from her?

MISS BALEN: I expect the next witness is on the way.

THE COURT: I'm sorry. I didn't hear you.

MISS BALEN: The next witness is on her way.

THE COURT: Where does she live?

MISS BALEN: Flatbush, your Honor.

THE COURT: How long does it take to get to Flatbush?

MISS BALEN: About twenty to thirty minutes.

That is she has been in transit.

THE COURT: She should be here momentarily?

MISS BALEN: I should hope so.

THE COURT: Is there anything else you want to present at this time?

MISS BALEN: No, your Honor.

THE COURT: Very well. We will recess again. It is getting to be a habit. I will await word from you.

(Whereupon, the Court was in recess from 11:25 a.m. to 11:35 a.m.)

SHIRLEY LEE, after having been first duly sworn, testified as follows:

THE COURT: Give your name to the stenographer.

THE WITNESS: Mrs. Shirley Lee.

MR. BRODSKY: Your Honor, I might say this witness, her name, was told to us for the first time late last week. We had no knowledge she was going to be a witness.

We had no opportunity to oppose this witness and it does come very late in the day after a case that has been proceeding three years and I just want to note that.

THE COURT: If you find you're at a disadvantage, we will give you some time.

MR. BRODSKY: Thank you.

DIRECT EXAMINATION BY MISS BALEN:

Q What is your address?

A 9502 Kings Highway.

Q What is your source of income?

A I receive public assistance.

Q Do you have any children?

A Yes. A girl and a boy.

Q What are their ages?

A Six and four.

Q How long have you been living at your present address?

A Six years.

Q Is that an apartment?

A Yes. It is.

Q Would you describe your apartment?

A I have three rooms, a bedroom, living room, kitchen.

Q Did there come a time when you decided to move from 9502 Kings Highway?

A Yes, in 1971

Q Did you take any steps to carry that out,

to move?

A Yes. I did.

Q What did you do?

A I went to various real estate agencies, different homeowners and half of them didn't want to take welfare clients.

MR. BRODSKY: I object to that and move it be stricken unless it is related to us in some way.

THE COURT: I think you would have to be a little more specific about it. What number did you say?

THE WITNESS: Most of them. Most of the real estate agencies and homeowners rejected or refused to rent to welfare clients.

Q How often did you look for apartments in this way?

A Plenty of times.

Q What is "plenty of times"?

A For over the past, say, 1971 to now, to the present time and I'm still looking.

Q How many times do you look or have you looked?

A I read ads in the papers or somebody may

tell me they know of an apartment or something like that.

Q Do you look every day?

A Not every day but every other day, when I have the time.

Q Did there come a time when you tried to rent a Lefrak apartment?

A Yes. There was.

Q When was that?

A This was in '71, in December of '71.

Q How did it come about that you tried to rent a Lefrak apartment?

A They had an ad in the paper and they said they would rent to welfare clients.

Q A "paper," Mrs. Lee?

A Yes. A newspaper.

Q Did you do anything with regard to renting a Lefrak apartment after you saw this?

A Yes.

Q What did you do?

A I went down to Life Realty and asked them, "Do they take welfare clients?" And they said, "Yes."

Q Where was the Life Realty office located that you went to?

A On Flatbush Avenue. I don't know the exact address.

Q Did you speak with anyone at Life Realty?

A Yes. I did.

Q Do you know who you spoke with?

A Yes. His name was Couchie (phonetic spelling).

Q How did you know it was Mr. Couchie?

A Because he told me who he was.

Q Did you have a conversation with Mr. Couchie?

A Yes.

Q What was that conversation?

A The conversation was "if you rent to welfare clients" and he told me, "Yes," and I would have to go down to the welfare to see if they would OK the amount, if I seen one that I liked.

Q Did you discuss any apartments when you were there speaking with Mr. Couchie?

A Yes. I did.

Q Which apartment or apartments did you discuss?

A The one on Nostrand Avenue. I think it was 2524 Nostrand Avenue. I'm not sure of the address.

Q Do you remember an apartment number?

A I think, I'm not sure, I think it was 215 or something like that.

Q Do you remember the rentals for the apartment?

A It was two thirty-five.

Q Do you remember how many rooms the apartment had?

A It had four rooms.

Q Did you inspect the apartment?

A Yes. I did.

Q Did you make any decision about the apartment after you had seen it?

A Yes. I did.

Q What was that decision?

A I went back to the real estate man and told the man I would like to have the apartment and he told me I would have to go down to the welfare to see if they would OK it.

Q What man were you speaking with?

A Mr. Couchie.

Q Did you go to welfare?

A Yes. I did.

Q What happened when you went to welfare?

A Welfare wouldn't consent to be the co-signerfor the apartment.

Q After you had been to welfare, did you take or make any effort to rent the apartment?

A Yes. I did.

Q What did you do?

A Well, I asked my mother if she knew somebody who would be a co-signer for me and she said, "Yes," and she told me of a Mr. Ernest Dossett (phonetic spelling). Me and Mr. Dosett went - (interruption)

Q Did you ask Mr. Dossett to be your co-signner or guarantor?

A Yes. I did.

Q Did you bring him to Life Realty?

A Yes. I did.

Q Was Mr. Dossett approved as your guarantor?

A No. He was not.

Q Was any reason given to you by a person at Life Realty for the reason Mr. Dossett was not approved?

A Well, they claimed he wasn't who he said he was.

THE COURT: You mean his identification was not sufficient?

THE WITNESS: Right.

Q I show you a portion of Plaintiff's Exhibit 24 and I ask you if you recognize it (indicating).

A Yes. I do.

Q Can you tell us what it is please?

A This is an application for Lefrak. This is an application that I signed for Lefrak.

MISS BALEN: I offer this application in evidence.

(Miss Balen handed a paper to Mr. Brodsky)

MR. BRODSKY: I have been handed two pages.

MISS BALEN: Your Honor, the problem is it was marked as an exhibit in this form, in a pile of applications, prior to this. We agreed I would use the application. This was taken from Exhibit 24 (indicating). This is a two-page document taken out of Exhibit 24 which can be marked Exhibit 24-a for identification.

THE COURT: Mark it.

(The two-page document so identified was marked Plaintiff Exhibit 24-a for identification and Plaintiff Exhibit 24-b for identification, respectively)

THE COURT: It's the same as this Exhibit 24?

MR. BRODSKY: It's not only that but we're going to get pretty confused with the one marked this morning as Exhibit 27.

MISS BALEN: I am not going to offer Exhibit 24 because it's incomplete.

THE COURT: This is complete (indicating)?

MISS BALEN: Yes.

In other words, this has been taken out of Exhibit 24, a batch of papers and we took it out and marked them 24-a and 24-b so you know where it came from.

Q I show you Plaintiff's Exhibit 24-b and I ask you if you recognize it - I'm sorry - I'd like to strike that because I don't believe we finished the introduction of 24-a, did we?

MR. BRODSKY: As long as I know what it is.

MISS BALEN: The application of 24-a.

MR. BRODSKY: No objection to 24-a, your Honor.

THE COURT: Very well. It has been marked and will be admitted.

(Plaintiff's Exhibit 24-a previously

marked Plaintiff's Exhibit 24-a for identification was marked in evidence.)

Q I show you Plaintiff's Exhibit 24-b marked for identification and I ask you if you've ever seen it before (indicating).

A Yes. I have.

Q What is it?

A It's an application for Lefrak. Mr. Ernest Dossett was going to be my co-signer for the apartment.

Q Were you present when that application was filled out?

A Yes. I was.

Q Did you see it filled out?

A Yes. I did.

Q Were you present when that application was signed?

A Yes. I was.

Q Did you see it signed?

A Yes. I did.

MISS BALEN: I offer this application as Plaintiff's Exhibit 24-b in evidence.

THE COURT: Objection?

MR. BRODSKY: I don't think so, your Honor. No objection, your Honor.

THE COURT: Admit it.

(Plaintiff's Exhibit 24-b previously marked for identification was marked in evidence)

Q At the time you asked Mr. Dossett to be your guarantor, what did you know about him?

MR. BRODSKY: I object, your Honor.

THE COURT: Couldn't you ask questions a little bit better where you can bring it out what she knew about him? That's rather general. You could ask what her acquaintanceship was with him.

Q Were you told anything by anybody in Life Realty concerning a requirement for a co-signer?

A Yes. I was. They told me if I could get a guarantor for the apartment, I would be able to get the said apartment.

Q Did this tell you anything about what sort of a guarantor you had to have?

A A person making over the amount, the total for rent, whatever.

Q Couldn't you ask Mr. Dossett to be your guarantor?

MR. BRODSKY: Objection.

THE COURT: Go ahead. I take it she's going to ask another question.

MISS BALEN: Yes, sir.

Q Did you know anything about Mr. Dossett at that time when you asked him to be your guarantor which made you think he might qualify?

MR. BRODSKY: Objection, your Honor.

THE COURT: I think she testified her mother suggested Mr. Dossett. Is that right?

THE WITNESS: I did.

Q Did you know whether Mr. Dossett was employed?

A No. I didn't.

Q Aside from the Lefrak apartment, were you ever refused an apartment since you started looking?

A Yes. I was.

THE COURT: Since she was refused at Lefrak?

MISS BALEN: Apart from the Lefrak apartment.

THE COURT: Other than Lefrak?

THE WITNESS: Pardon?

Q Aside from the Lefrak Apartment, were you ever refused an apartment since you started looking?

A Yes. I was.

Q Under what circumstances?

MR. BRODSKY: I object, your Honor.

THE COURT: You may proceed.

A Because they didn't want to take welfare clients.

Q Who is "they"?

A Real estates and the homeowners.

Q How often did that happen?

A Several times.

Q What is "several times"?

A Oh! Every time I go, you know, they either say they don't want welfare, you know.

Q Does this happen in any particular area of the City?

MR. BRODSKY: I object, your Honor.

A Yes.

THE COURT: If she knows what area. I suppose you are trying to cover what area she was trying to rent.

MISS BALEN: Yes. sir.

THE WITNESS: May I?

THE COURT: Yes.

THE WITNESS: East Flatbush.

MISS BALEN: Thank you. I have no further questions, at this time.

THE COURT: Very well. Mr. Brodsky.

CROSS-EXAMINATION BY MR. BRODSKY:

Q When you went to these other landlords to rent, I take it they didn't permit you to fill out an application for an apartment; is that correct?

A That's correct.

Q But you did fill out an application for the Lefrak apartment;is that correct?

A I didn't until another - no - I did not fill out an application for Lefrak. I filled out another - no - I did not - they didn't give me a paper. They didn't give me a paper to take to welfare, - (interruption)

Q Pardon me. I didn't mean to interrupt. I'm sorry. Continue.

A ...except when Mr. Dossett was my co-signer.

Q You did fill out that you had a co-signer in Exhibit 24-A?

A Yes. I did. Sorry.

Q And that application was filled out several days before you came in with Mr. Dossett; isn't that correct?

A That's correct.

Q And you were told and you say you saw something - strike that. You were not told at Life Realty by anybody that they didn't rent to welfare recipients, were you?

A They told me that they will rent to welfare if welfare will be a backer, you know, about the co-signer.

Q Or if somebody else would?

A Or if somebody else. That's right.

Q And they told you they did that because people on welfare didn't earn enough money for the apartments they were renting?

A That's true.

Q Now, these other landlords you're talking about, simply told you, "We don't rent to welfare people" and didn't take any information from you? Is that right?

A That's correct.

Q And they didn't suggest you get a guarantor; is that right?

A That's correct.

Q And they just refused to talk to you?

A That's correct.

Q And those landlords were other than Lefrak; is that correct?

A That's correct.

Q Now, you were told to inspect a particular apartment; is that correct?

A That's correct.

Q One that had been advertised?

A It wasn't advertised. It was in the office but it wasn't advertised in the paper.

Q It was in the Life Realty office?

A Yes.

Q On the bulletin board there?

A Yes.

Q And nobody in Life Realty suggested to you in any way they wouldn't rent to you because you were black; is that correct?

A Rephrase the question.

Q Did anybody in Life Realty ever suggest to you, in words or substance, they wouldn't rent to you because you were black?

A No.

Q You said you had gone to an apartment on Nostrand Avenue in Brooklyn; is that correct?

A That's correct.

Q Did you know anybody who lived in that apartment?

A No. I did not.

Q When you went there, did you see black people coming in and out?

A No. I did not.

Q Were they all white?

A Yes. They were.

Q You were present when Mr. Dossett signed an application for an apartment on your behalf; is that correct?

A That's correct.

Q Mr. Dossett, and this is in Exhibit 24-b, put down on his application that he was employed by the Williams and Williams law firm. Do you know that?

A I do.

Q Do you know whether or not he was ever employed by such a law firm?

A I don't know that.

Q Do you know whether or not such a law firm exists?

A I don't know that either.

Q Now, Mr. Dossett put down as the address of this law firm, 162 116th Street, Westchester, New York. This is on Exhibit 24-b. Are you aware of that?

A I'm aware of the address that's on there

but I've never been there.

Q Do you even know whether or not such an address exists?

A I don't know.

Q Now, Mr. Dossett also put down on the application that he was employed as a "consultant" for this law firm. Are you aware of that?

A I wouldn't know.

Q No, m. I'm only asking whether or not you are aware that's what he put on the application?

A I'm aware that's what he put on the application. That's all.

Q But you don't know whether or not he was, in fact, a consultant to that law firm?

A No.

Q Do you know what Mr. Dossett did for a living at that time?

A No.

Q Do you know now?

A No.

Q Did you ever meet him before the day you saw him fill out this application?

A I had seen him about three or four times. He was my mother's friend. He wasn't mine.

Q Now, Mr. Dessett put down two telephone numbers on the application. Are you aware of that?

A Yes. I am.

Q Do you know whether or not those telephone numbers exist in the sense they were registered in anybody's name at that time?

A No. I do not.

Q Did you ever try to call anybody at those numbers?

A No.

Q Now, Mr. Dessett also put down on his application that he was receiving a Police Department Retirement Pension of $16,000.

Are you aware of that?

A No. I'm not.

Q Are you aware of the fact he put it in his application?

A Yes.

Q Do you have any knowledge of whether, that fact is true?

A No. I don't.

Q Do you know if Mr. Dessett ever even worked for the Police Department?

A I don't know.

Q Are you aware of the fact Mr. Dessett put down on his application that he had a checking account at Westchester Association?

A Yes.

Q Do you know whether or not thereis such an organization in existence?

A No. I don't.

Q Or ever was in existence?

A No. I don't.

Q And he put down, as the address of that Westchester Association, First Avenue in Westchester. Are you aware of that?

A Yes. I am.

Q Do you know whether or not there is a First Avenue in Westchester?

A No. I don't.

Q Now, Mr. Dersett also said on his application that he owned his own home. Are you aware of that?

A That he said on the application?

Q Yes.

A Yes.

Q Do you know whether or not, in fact, he owns his own home?

A No. I don't.

Q Do you know where he lived?

A No. I don't.

Q Did you ever, yourself, try to check any of these facts that are on the application?

A No. I did not.

Q At the time you applied for the apartment, then, was your sole source of income from welfare?

A Yes. It was.

Q Were you receiving a check twice a month from welfare?

A Yes. I was.

Q And the amount would be whatever amount you would be entitled to under the applicable statutes and regulations; is that correct?

A That's right.

Q You had no other income at the time, no prospects of getting additional income at the time?

A No.

MR. BRODSKY: Thank you.

THE COURT: Do you want redirect examination?

MISS BALEN: No.

THE COURT: May the witness be excused?

MISS BALEN: Yes.

THE COURT: Very well. You're excused.

(The witness was excused)

MISS BALEN: Your Honor, again, our next witness is not here. She should be here in a half-hour. I can't imagine she could be delayed any longer.

Under the circumstances, I respectfully suggest that we break for lunch at this time and I will try very hard not to repeat what happened this morning in the afternoon.

THE COURT: Very well. Do your best. Shall we recess for an hour? Hour and a half?

MR. BRODSKY: Whatever your pleasure is.

THE COURT: I don't care to be in silent agreement. I want to get through with the case. Would an hour hurt you too hard?

MISS BALEN: No, your Honor.

THE COURT: Very well. We will come back at one.

MR. BRODSKY: Could I get an idea of where we're going from Mrs. Boyd so I can judge whether I can get any witnesses here?

MISS BALEN: There is a witness coming from

Washington.

THE COURT: What is the name?

MISS BALEN: Bickel.

THE COURT: Are you familiar with Bickel?

MR. BRODSKY: No, your Honor.

THE COURT: Did you have a list of witnesses?

MR. BRODSKY: Yes. We were told what his name was.

MISS BALEN: And whether or not they were shown his curriculum, they were told what he would testify to and they had the opportunity to examine the exhibit.

THE COURT: How long is Mr. Bickel going to testify?

MISS BALEN: I expect his testimony to be very lengthy, perhaps a couple of hours. And, Mrs. Boyd's.

THE COURT: How long will she testify?

MISS BALEN: About an hour.

THE COURT: You are going to put her on first?

MISS BALEN: Yes. I will be a witness in this case and I will be forced to testify.

THE COURT: What is the nature of your

testimony?

MISS BALEN: It happened I was a witness to what I consider to be a material fact, a contested fact. I had a telephone conversation with someone in the management defendant office, not long, but some time before the litigation was begun or planned.

This telephone conversation was denied by the defendant and the individual I spoke with claimed he has no recollection of the telephone conversation.

I have considered the various ethical questions involved and under the circumstances where I did not feel there was other counsel for my clients and I felt the facts which I had to introduce were very important to my client's case and it would be unjust if I either withdrew as counsel or refused to testify.

I concluded the canon of ethics would permit me to testify. The fact is that I contacted a member of the disciplinary committee of the Bar of the City of New York and I have carefully read the canons and the annotations and

I have reached this conclusion.

THE COURT: This was before you were employed in this case?

MISS BALEN: Yes. Before this case was begun. That is, before any decision was made to litigate against the defendant.

THE COURT: Was it pursuant to some investigation?

MISS BALEN: Not even that. It was only due to an effort I was trying to make to help my clients find an apartment.

THE COURT: Help another client?

MISS BALEN: This particular client, the plaintiff.

THE COURT: Then, they later filed suit?

MISS BALEN: Yes.

THE COURT: Based on the events that occurred when you called?

MISS BALEN: No, your Honor. I guess in part. An affidavit from me telling the contents of that conversation which was attached to the motion to intervene.

The original administrative complaint made mention of the fact only that the plaintiff

had been refused because she was a welfare recipient and did not come in the conversation, I don't think.

THE COURT: Did your efforts or calls include other rental agencies?

MISS BALEN: No, your Honor. I don't, as a rule, refer clients to other rental agencies. When I know of the availability of an apartment, I do tell the client. This does not happen often.

When a list of vacancies in the Lefrak Apartments came into my hands by accident, it was shown around the office where I was working and most of the time I do not get that kind of information but when I do, I pass it around.

THE COURT: You're in a famous office. What office are you in?

MISS BALEN: I'm in the office of a present branch of a Legal Services Office of Economic Opportunity.

If your Honor would like, I could submit my affidavit to you now.

THE COURT: Any objection?

MR. BRODSKY: The objection is not as to Miss Balen's ethical problems and I take no issue on the ethical problems but since she is putting herself in the position of not being an advocate but playing a part in the proceedings.

Not only that but the conversation the way I understand it would not be admissible. Miss Balen called somebody she can't identify and the conversation was a telephone conversation. I think in any trial the conversation would be excluded, in any event, as I understand it.

There is no way Miss Balen can identify the voice so the testimony, I think, is excludable. I told Miss Balen my position on that and that I would object to it on that ground.

As I said as to the ethical problems, however she takes it up, I have no position on that.

THE COURT: What do you think about the legal objection?

MISS BALEN: I would testify there was a self-identification during the telephone

conversation, that it was a very precise telephone identification, both as to name and title.

THE COURT: You mean as to the parties at Lefrak?

MISS BALEN: Yes, your Honor. I called the regular place of business of the Lefrak Organization and as to the admissibility of the conversation, itself, I would say and we would argue it's admissible because of the contents of the conversation.

THE COURT: He objects to the fact you no way of identifying who you were talking to.

MISS BALEN: Our answer is it was a self-identification.

THE COURT: I suppose if you could prove who you were talking with it would be admissible, I suppose.

MISS BALEN: I believe there is support for the argument that a self-identification and/or calling the regular place of business in connection with a regular activity of a particular organization would be sufficient to identify or set the framework for the conversation.

THE COURT: You asked for a particular party when you called?

MISS BALEN: Your Honor, I asked for a vice president with knowledge about rental policies. I didn't knew the man's name. I wanted to speak with that person but I did not knew the man, who he was.

THE COURT: And the man apparently came to the telephone and gave his position and name?

MISS BALEN: Yes.

THE COURT: And you have this conversation in your affidavit?

MISS BALEN: No. The affidavit refers to the conversation. The contents of the conversation was attached to intervene way back in October or September of '71. The affidavit I'm referring to is being prepared now. That is, as to my efforts to find out, as counsel.

THE COURT: You might let me have that and I'll consider it. You're not going to testify yourself until you put on these other two witnesses?

MISS BALEN: Yes, sir.

MR. BRODSKY: Your Honor, I think the authority is to the contrary about voice identification. She might have spoken to anybody in a different organization and even assuming somebody in the Lefrak Organization, it might be somebody with no knowledge about what they were talking about.

I think it wouldn't be admissible in any trial and I think it should not be admitted here.

THE COURT: Doyou have the authority?

MR. BRODSKY: I'll give you some.

THE COURT: Very well. Miss Balen, if you have any authority, you can give whatever you can.

MISS BALEN: It is one of the proposed new rules of evidence togetherwith the annexed Rule 901-b-5 and 6 - not "5" but just "6.)

THE COURT: What is that volume you have?

MISS BALEN: Just Federal Rules and Decisions containing Rules of Evidence.

THE COURT: These are the oneshold up in Congress?

MISS BALEN: Yes. These are not one of the

sections being contested. However, in the Advisory Committee's notes, they refer to this form of identification and they state if the number is for a place of business, the place of authority, it allows an ensuing conversation if it relates to business reasonably transacted over the telephone on the theory that the matter of a telephone connection is an invitation to do business without further identification, citing Matten v. Hoover Company, 350 Mo. 506; 166 SW 2d 557 (1942); City of Pawhusa v. Crutchfield, 147 Okla. 4, 293 P 1095 (1930); Zurich General Accident and Liability Insurance Co. v. Baum, 159 Va. 404, 165 SE 518 (1932).

THE COURT: What FDR is this?

MISS BALEN: I'm sorry. Of '56.

In addition to self-identification, they cited McCormick v. Wigmore, 2155, annotation 71 ALR 5, 105, 326.

THE COURT: Well, let me have the affidavit?

(Miss Balen handed a paper to the Court)

And we will recess for lunch until 1:15 p.m.

(Whereupon, the Court was in recess

from 12:15 p.m. to 1:15 p.m.)

THE COURT: Are you ready to proceed?

MISS BALEN: Plaintiff calls as her next witness Gary Bickel.

Your Honor, before we begin with this witness, may I say I'm having difficulty from this point in the courtroom.

THE COURT: You can come closer and stand by your chair, whichever you prefer.

MISS BALEN: If the defense counsel has no objection.

MR. BRODSKY: As long as I can hear.

THE COURT: Mr. Brodsky, you can get closer so you can hear too.

GARY WILLIAM BICKEL, after having been first duly sworn, testified as follows:

THE COURT: Give your name to the stenographer.

THE WITNESS: Gary William Bickel.

DIRECT EXAMINATION BY MISS BALEN:

Q What is your address, Dr. Bickel?

A 2110 O Street, Northwest, Washington, D.C.

Q Are you presently employed, Dr. Bickel?

A Yes. I am.

Q By whom are you employed?

A A non-profit research organization named the Bureau of Social Science Research, Inc.

Q What is the Bureau of Social Science Research?

A A private research organization that contracts with various government agencies, mostly at the federal level, to carry on research.

Q In what capacity are you employed by the Bureau of Social Science Research?

A I'm one of the senior members of a project which has been operated by the Bureau for about five years now known as the Legal Support Program to give legal aid by legal aid attorneys and legal aid societies for social science back up work.

Q What are your duties and responsibilities for the Bureau of Social Science Research?

A Well, to carry out whatever sort of analytical work research data gathering and in some cases the analysis of data supplied to us, as called for by a given case.

Q How long have you been doing this, doctor?

A I've worked at the Bureau for about a year and a half now.

Q What is your higher educational background?

A Alma Mater: University of Colorado. My graduate work was done at Stanford with a Master's Degree in Economics and a Doctor's in Economics.

Q Have you done any teaching, Dr. Bickel?

A Yes. I've taught four years at the University of California and was a Visiting Professor at the University of Colorado and spent four years at Cornel University most recently.

Q What subjects have you taught?

A Almost every area of economics.My training is very general and consists of several applied fields of economic development and also statistical methods, quantative research methods as used in economics.

Q Did you ever have occasion to analyze, through statistical methods, the rental practices of the Lefrak Organization?

A Yes. I did.

Q When did you do this analysis?

A Last winter, beginning in December and finishing up in January.

Q What was the object of this analysis that you did?

A The object was to find out the impact on

New York City rented households, the eligibility criteria as these are used by the Lefrak Organization and, in particular, to find out whether the impact is differentiated by racial groups.

Q Could you tell us the method you used in doing that analysis?

A I went through several steps. The first was to draw on the regular published data from the United States Bureau of the Census from the 1970 regular Census of Population and Housing.

Secondly, I utilized the formula for the so-called 90% rule as it's used or utilized by the Lefrak Organization.

I drew on additional Census Bureau data that was provided through a special study done by the Bureau of the Census for the City of New York which provides some cross tabulation that wasn't available in the published data.

I utilized data on the rental crisis and the size of rental units in the Lefrak Organization as these were gathered from the listings that were posted over a three-month period, July through September of 1971 and I utilized some additional Government data on tax withholding and things of that sort that bore on

the general problem.

Q I show you Plaintiff's Exhibit 6 marked for identification and I ask you if you recognize it (indicating).

A Yes, indeed. These are the Lefrak Organization listings of the apartment vacancies throughout the areas of New York City where they have apartments.

Q Have you ever seen these lists before?

A Well, these appear to be precisely the ones I used copies of in doing my analysis.

MISS BALEN: Thank you, Dr. Bickel. I offer this in evidence, through this witness.

MR. BRODSKY: Merely as the data which he used?

MISS BALEN: Yes.

MR. BRODSKY: No objection as to what it is being offered for, the data this man used for whatever he did.

THE COURT: That will be admitted.

COURT CLERK: These were already admitted in evidence this morning, your Honor.

MR. BRODSKY: That is what I thought.

Q What is the 90% rule?

A The 90% rule is an eligibility criterion

used to establish eligibility on the part of the potential renter for a particular unit.

It, essentially, is a way of specifying the ratio between a person's income and the rental cost of the community in general terms.

Q Could you state the 90% rule for us, please?

A Yes. The 90% rule says the person's net weekly take-home pay should be great enough to cover at least 90% of the rental of the unit.

Q Did you analyze the 90% rule?

A Yes. I did.

Q What did you find when you analyzed the 90% rule?

A Well, in comparing it with other rules of thumb, all the Census data, our usual procedure is to deal with a simple ratio of rent to income. The usual is a 25% ratio, more or less, being typical as 25% of gross income, which would be the amount paid for rentals.

The 90% rule is a sort of an inversion of this so that rather than measuring the income to rent, it measures the rent to income.

The question also is: What is the equivalent this expresses in terms of rent to income?

In the usual terms of the 90% rule, since it deals with weekly net income or take-home pay being mostly compared with a rent income ratio that also deals with net income, that measures rent as a ratio to the net income, the net monthly income of a person.

If this were done, the 90% rule would correspond to a rent/income ratio on a net basis that would amount to .2565, if the rule were applied to net income.

In general, the rent/income ratio, however, is applied to gross income so it's necessary to move from gross income to net income in order to translate the 90% rule to compare it with the rent income ratio in its usual form.

To do this, it's necessary to make some assumptions as to how much is included from gross income as to net income and it was for this purpose I used the Federal Withholding figures and data on the Federal Withholding.

These date from '69 but they don't vary too much from year to year. If the net income used in the 90% rule excluded only federal tax withholdings and that's the Federal Income Tax and Social Security deduction, we could use the ratio of these Federal Tax With-

holdings. Then, the 90% rule would correspond to a net income ratio, in a usual sense, that is gross income of 20.7% . So, in other words, the 90% rule corresponds almost precisely to a 20% rent income ratio, in a usual sense, if we exclude only Federal Income Tax Withholding.

If we had data with which to measure other kinds of withholdings and deductions, going from gross income to net income, in other words, State Taxes, other work related expenses or other kinds of fixed obligations, then as the proportion of withholdings increase, the 90% rule would correspond to a smaller and smaller rent/income ratio.

Just to experiment with one of these, I used the amount of withholdings that the Rand Corporation had utilized in their study of New York City Rental Households and those withholdings are about half, again larger than the Federal Income Tax Withholding and using that basis for measuring the withholding, then the 90% rule would be equivalent to a net income ratio of 18 and I believe it's .1% - 18 and some small percentage so the larger the withholding, moving from gross income to net income, the smaller the net income ratio that corresponds to the 90% rule.

Is that sufficient?

Q Yes. If only taxes, federal, state and city, as debts, were subtracted from gross income, what would be the net income ratio equivalent to a 90% rule?

A Well, as I say, if only federal taxes are deducted - (interruption)

Q Federal, state and city taxes and debts.

A I don't know precisely because I don't have any data on what the average debt obligations are for New York City rented households.

All I can say is it would be something below 20% and I would judge that it would probably be in the range of 17, 18, 19%.

Q Did you apply your analysis of the 90% rule to Census data on the rent/income ratio, actual rent/income ratios of rented households in New York City?

A Yes. I did.

Q What did you find when you did this?

A Of course, to do this I had to use a quite conservative assumption that the 90% rule was equivalent to a 20% net income ratio since the published data breaks the five percentage points.

It shows the net income ratio is above or below 25%. Using that conservative assumption with

regard to the 90% rule and the degree of restrictiveness that it imposes, what I found was the following where I worked through several steps from the more general to the more specific and precise so the first step was the most general of all.

It was to examine what would be the effect of the 90% rule if it were applied to all New York City rented households on the actual rents they paid, the actual incomes they had in 1970, as indicated by the Census data.

What I found here and I'll refer to my notes, is that the 90% rule, if applied generally to all households in New York City, would exclude 50.5% of all New York City rented households from the housing they were actually occupying.

In other words, they would not qualify for the housing they were actually occupying, if the 90% rub were applied.

Breaking this down by race and distinguishing this from black and Puerto Ricans, as distinguished from being together as the black or minority group segment of the population and whites and others, which includes a sprinkling of orientals and Indians and others, but it's predominantly white, and breaking it down into

those two groups, I found that black and Puerto Ricans represented in households would be excluded to the extent of 57.6%.

In other words, 57.6% of all black and Puerto Rican households would be excluded from them by the 90% rule, whereas, in the white categories 4% and 1% would be excluded.

That is a difference that is quite significant.

The second step in working from the most general into the more specific that I followed was to see how the 90% rule affected it, to see what, if anything, the 90% rule's effect would have been if applied only to renters who were renting units in the price range that Lefrak actually operates them with.

In other words, from the data of the Lefrak Apartment listings, there were no apartment listings during that period of 1971 at less than $140 a month for the small efficiency apartment and 99.3% of all listings registered were higher by $50. a month to $150.a month not to say anything about the size of the apartments.

This is generally so this is very rough but looking at all the New York City rented households that actually paid rents of $150 a month and more and we're now talking about approximately a fourth of all New York

City rented households that are in this rented range where Lefrak operates, I found that the amount of exclusion resulting from the 90% rule was actually greater if not applied to all rented households, for all rented groups, together, in this rented range of $150. a month and up, that 56% would be excluded from the housing they were actually occupying at the time.

If the 90% rule were applied to that, breaking it down by race the different references gross larger in their rental price range than where Lefrak actually operates.

Black and Puerto Ricans represent 71% and whites 53.9% which would be excluded. The relative difference between the two has now increased.

For this group, if we looked at it in terms of the proportion of population, renting in that price range that would eligible to rent Lefrak units, we find those qualifying to rent, those classes qualifying to rent, being eligible under the 90% rule are, approximately, two-thirds greater if you're white than if you're black or Puerto Rican.

In other words, if we looked at just the renters in that price range and took a random sample and took one white rented household and one black or Puerto

Rican rented household, the probabilities that he would qualify in a Lefrak Apartment would be two-thirds greater if you were white than if you were in the other groups.

The third step I followed in working my way in from the quite general and rough to the more precise and specific was to examine the 90% rule as it is used by the Lefrak Organization, in combination with their other eligibility criteria, which is the so-called occupancy standards and this now gets to the question of how these things work out.

When we account for the differences in family size and differences in apartment size, the occupancy standards used by Lefrak and here I'm going from the responses to the interrogatories that were submitted by the Lefrak Organization attorneys, the occupancy standards set a maximum limit to the size of the apartment that any given family size would be eligible to occupy.

We can look at that the other way around that and say for any given family size the standards represent the smaller size they would be able to occupy so it's a spacious standard, basically.

Now, this data on the space standard, the occupancy standard, by family size, if you'd like, I would read to you what the standards are but I presume it's in

evidence, isn't it?

Q Yes. Continue.

A Employing this data on the space standards by family size with the Census data, from the special study that the Census Department did for the City of New York, we were able to measure the effect of the 90% rule on households of each size, one-person households, two-person households and three-, four-, five- and six-person rented households.

Then, looking at the average rented price for Lefrak units in each apartment size and this is taken from the Lefrak listings as they posted them, we can see the amount of money that it would take for a family of a given size to rent the smallest Lefrak Apartment, that he would qualify for on the basis of the occupancy standard.

Then, applying the 90% rule to this, we get another sort of in reverse - not in reverse - this is exactly the way it's applied and we can see what level of gross income each family, at each give size, would have to have in order to qualify under this double qualification, both under the 90% rule and under the occupancy standard that limits the size of the apartment that a person can occupy. That is, the bottom.

These results are as follows:

For a single person to occupy an efficiency apartment at an average price and this average is just the mid-point of all the lis ngs, the Lefrak listings of $175. a month, that would require an annual gross income of $10,500. in order to qualify under the 90% rule.

For two persons who could qualify for an efficiency apartment, a basic one-bedroom or one bedroom and kitchen apartment, averaging all of those, that would cost $208. a month as the apartment a two-person family would occupy.

Applying the 90% rule, that would require $480. as gross income in order to be eligible, a month.

For three persons, the smallest apartment for three persons, a three-person family, there is a junior two-bedroom apartment. The average price of those was $250. a month.

This is for the July through September, 1971 period. The gross income required under the 90% rule would be $15,000. to occupy that, for a three-person apartment.

For a four-person apartment, the smallest size allowed is a two-bedroom apartment. The average price of

those was $285. The annual gross income required is $17,100.

Finally, for a five- and six-person household, a family that large would not be permitted to rent an apartment smaller than three bedrooms and the average price of a Lefrak three-bedroom apartment was $340. and the gross income required to qualify for that three-bedroom apartment would be $20,400.

Now, using the Census data and the special study that was done for New York City, which provides gross tabulations by race and income levels and family size, and this is what you can't get out of the published data, itself, because they give data on family size and data on income levels but they don't give the gross tabulations that gives different income levels and sizes, especially the income levels for each family size and so, using that now and looking at the thing by family size and then adding it up, it turns out that the 90% rule, from compensation, with this space occupancy standard and applied to all ethnic groups and all rented households, excluded, let's say, 81.8% of all New York City rented households.

I presume it's in evidence.

Q Don't worry about what's in evidence. Con-

tinue.

A I presume it's broken down for each family size, if you want them, but that's for all families taken together.

The apartments is by apartments for each family size and this is the sum total. The degree of racial differentiation is now greater yet for white households, 75.9% of New York City white-rented households are excluded for black and Puerto Rican households.

Taken together, 95.2% are excluded; 94.2% of the black households are excluded and 97.4% of Puerto Rican households are excluded.

If we look at that in terms of the eligibility proportions for each group and compare those, I think it's a little better for all races together, 18.2% of all New York City households which would be eligible; 24.1% of the white households would be eligible and for black and Puerto Rican households, taken together, 4.8% of the black and Puerto Rican households would be eligible.

This means the probabilities for a random white rented household being eligible is almost exactly five times as great than the probabilities of a black

or Puerto Rican random households that would be eligible.

If we look at black rented households alone, 5.8% would be eligible. The white ratio is four and two tenths times greater than that.

If we look at the Puerto Rican households, 2.8% would be eligible and the ratio of white households that would be eligible is 9.3% greater than that.

The next step that I followed was to use this data that distinguished by family size and income levels but to look only at the top half of the income distribution because, of course, of the extremely poor income people in this price range are out of the price range any way so I wanted to narrow it to the group of New York City households that would correspond more closely to people who might, potentially, be eligible to rent or would be capable of renting units in this price range on the basis of their income alone.

If we look at the upper half of all rented households, the upper half, by income, then the 90% rule in combination with the Lefrak Organization occupancy standards would exclude 59.4% of all New York City rented households.

It would exclude 48.6% of white rented households and it would exclude 88% of all black and

Puerto Rican rented households in the top half of the income distribution for each of those groups in terms of eligibility, instead of exclusion, among white households with 51.4% that would be ineligible among black households; 14.8% would not be eligible among Puerto Ricans and 6.4% would not be eligible of others.

These are the persons that are at the top half of the income distribution.

I had two more steps that are similar to the methods I have applied so far. What I've measured so far is the impact of the 90% rule in combination with the occupancy standards, measuring the eligibility or the exclusion of persons for the average prices Lefrak Apartments ranges in each of these apartment sizes.

If what we're concerned with is the general impact of the 90% rule and the other eligibility criteria, I felt that was the appropriate price to use. However, I could see it can be argued if what we're concerned with is one individual and his likelihood or probability of his being excluded, we shouldn't use the average price of the apartment; we should use the minimum prices for apartments in the minimum price rage permitted instead of the average price of Lefrak Apartments in its minimum sizes that are permissible.

I did exactly the same analyzing, looking at the minimum priced apartments of the minimum size allowable for each family size, sort of a double minimum and then looking at all New York City rented households and found 73% would be excluded, 27% would be eligible.

The differentiation now between white households and black and Puerto Ricans is not quite as great as it was in the previous case but it's still quite great.

Now, 65% of the white-rented households would be eligible for the minimum price, minimum size Lefrak Apartments; 34.7% of white households would be excluded.

For black-rented households, 90.9% - I'm sorry - that's black and Puerto Rican together, for black-rented households, 9.7% would be eligible; Puerto Ricans, 5.6% would be eligible.

So, on this basis, looking at the excludables and eligibles for the minimum priced rented units and the racial differentiation between the two, a white household chosen at random would be more than three times as likely to be eligible as the Puerto Rican household chosen at random so on the basis of those figures, it's

quite clear that the degree or let's say the impact of the 90% rule as it is actually used in combination with the occupancy standard, is quite stringent, quite severe and quite heavily differentiated as between white households and black and Puerto Rican households.

Q Thank you, Dr. Bickel.

I show you Plaintiff's Exhibit 18 marked for identification and I ask you if you recognize it (indicating).

A Yes. I do. It's one of the tables I prepared as a summary table, an analysis of this.

MISS BALEN: I would offer this table in evidence.

MR. BRODSKY: May I inquire on a voire dire before your Honor makes a ruling on this?

THE COURT: This exhibit?

MR. BRODSKY: Yes, your Honor.

THE COURT: What is the number?

MISS BALEN: 18.

THE COURT: What is it?

MISS BALEN: It's a table, your Honor.

THE COURT: That's a table he made up, according to his testimony?

MR. BRODSKY: Yes, your Honor. I'd like

to ask him a few questions on it before your Honor rules.

THE COURT: That's just a synopsis of his testimony.

MISS BALEN: In part it is.

MR. BRODSKY: In part it is.

MISS BALEN: Would your Honor like a copy?

THE COURT: Yes.

(Miss Balen handed a paper to the Court)

Thank you.

VOIRE DIRE BY MR. BRODSKY:

Q Dr. Bickel, did any part of any of the study that you made involve welfare recipients?

A Only implicitly as they are included with the other households.

Q Aside from that, were you asked or did you focus in any respect on welfare recipients as a group of people?

A In the analysis I've described to you, no, I didn't.

Q So that nothing in Exhibit 18 for identification, the one which has just been offered in evi-

dence, has anything in it which would separate welfare recipients as distinguished from any other class of people; is that correct?

A In and of itself, that is correct, yes.

Q And that's true of all the other studies and reports that you did in connection with this case; is that correct?

A Not quite in that I've always familiarized myself with the research work that was done in this general area by the Rand Corporation that does make this distinct but, as far as the analysis that I've described to you, it's quite correct.

MISS BALEN: Your Honor, excuse me. May I point out this witness' testimony has not been concluded and that I think Mr. Brodsky may be anticipating testimony and I don't know what he's asking now is necessary with regard to the admission of this exhibit.

MR. BRODSKY: Your Honor, my position is, well, starting out, this is a case, if I understand it at all, which is a claim being made by a class of welfare recipients and the claim, in essence, is that the manner in which we

have used our economic standard is:

a. Unreasonable; and

b. Discriminatory as against minority groups.

Now, Dr. Bickel did no study with respect to welfare recipients. His reports do not purport to involve welfare recipients in any way.

The statistics are irrelevant to any of the issues that we're trying here and it is in that respect that I object to this exhibit and move to strike out Dr. Bickel's testimony.

THE COURT: Very well, Miss Balen.

MISS BALEN: Your Honor, the complaint clearly states or alleges that the plaintiff is complaining of the discrimination or impack on black or Puerto Rican people, generally.

Plaintiff is black. Intervenor-Plaintiff is black. Most public assistance recipients are either black or Puerto Rican, as the evidence will show, or as the table submitted this morning, the Census, does show.

I submit that the rules of the Lefrak Organization that many have a racial or ethnic effect and are at the heart of this case and it would be absurd and, in fact, it would completely emasculate this case to confine ourselves only to welfare recipients and to shut our eyes, whether they are mostly black or Puerto Ricans, to shut our eyes to the rest of this situation in this city, which has been alleged in the complaint.

THE COURT: What do you think the professor should direct his attention to?

MR. BRODSKY: Well, I think to the extent this kind of testimony would be relevant it should be as to what the effect is on welfare recipients, not what the effect generally, overall, is on blacks and Puerto Ricans.

There are very substantial distinctions.

THE WITNESS: I'm prepared to testify, your Honor.

THE COURT: I'm sorry. I thought he was taking the 90% rule and applying it to society generally and then racial differences and things like that, to see what the impact would be of

such a rule if it were applied across the board.

MR. BRODSKY: To society, as a whole, but not to welfare.

THE COURT: And this isn't racial?

MR. BRODSKY: We never did get to welfare recipients.

THE COURT: I suppose she's going to introduce it as far as the race is concerned.

MR. BRODSKY: Even so, your Honor, this testimony, that may be independent testimony. That testimony wouldn't be related to this. Whatever racial impact an economic rule may have is one thing but this is not an indication where we're charged with discrimination in housing,as such, by excluding blacks and Puerto Ricans.

That's not the claim here.

THE COURT: What he's doing, as I understand it, is applying your rule to what would occur, finding out what would occur in other areas.

MR. BRODSKY: But not to welfare.

THE COURT: Not only on actual rents but also on actual rents and income ratios.

MR. BRODSKY: But not to welfare recipients.

He's applying it to people, as a whole, and I think this case doesn't involve society as a whole.

The class of people, as has been cited at the request of this plaintiff by Judge Weinstein, are welfare recipients who live in the immediate area, not all people who live in the area.

THE COURT: I think it would be admissible. Perhaps you better pursue your explanation first.

THE WITNESS: I'd be happy to give an explanation.

MISS BALEN: Doctor, please.

THE COURT: You might address your counsel for the plaintiff.

BY MISS BALEN:

Q Do you have Plaintiff Exhibit 18 marked for identification before you?

A I have a copy of the same thing.

Q Could you explain this table to us, please?

A This is one of several summary tables. This simply summarizes part of the data that I presented in my previous testimony.

Q Which part was that, Dr. Bickel?

A The most general part, the part that simply deals with all New York City households and then narrows it in by the first step, in looking at New York City rented households in the rental range of $150. and above.

I have other summary tables that summarize it more in a sophisticated manner and details which comes later.

Q I show you Plaintiff's Exhibit 16 marked for identification and I ask you if you recognize it (indicating).

A Yes. That's also one of the tables that I've prepared.

Q Could you explain that table to us? Excuse me. Your Honor, if you would like to have a copy of that table -

THE COURT: Very well. Hand it over, please.

(Miss Balen handed a paper to the Court)

A This covers part of the finalized part of the data that I presented. It shows the breakdown of New York City households by size of families. It shows the number of rented households in each one of

those family-sized groups. It breaks down the total of New York City rented households into the racial divisions.

It shows the number of households, family-size, within each racial division. It shows for each family-size the gross annual income which I calculated would be necessary under the 90% rule to occupy a Lefrak Apartment appropriate to that family-size.

This table summarizes the findings as they are applied to the average prices for Lefrak Apartments for each family-size.

That is the average price of the smallest Lefrak Apartment that would be allowed in each family-size and then it shows the breakdown into those that were excluded and those that would be eligible under the 90% rule for each separate family-size.

For example, the first entry right at the top of the table, at the right hand side of the page, shows that there would be some 438,000 one-person households excluded from Lefrak rentals.

That's 84% of all one-person rented households and there would be 81,000 one-person households eligible for Lefrak rentals.

That's 15½% and so on. Is that a sufficient description?

Q If you are satisfied with it. I show you Plaintiff's Exhibit 17 and ask you if you recognize it (indicating).

A Yes. That's also one of the tables I prepared. This is a summary table showing these four levels or degrees of specificity that I described before.

The top line on this table summarizes the data that's embraced in the previous large table. In other words, it shows, beginning at the top left hand corner, that among all ethnic groups only 18.2% would be eligible for Lefrak Apartments under the 90% rule and the occupancy standards and working with the average priced Lefrak unit.

That is, for the small sized permissible for each family size and then among the total items, it breaks those down by racial groups.

It shows the percentage of each racial group, the rental household of each racial group that would be eligible for Lefrak rentals and farther to the right it shows the figure to which it compares the eligible rates for white households with the eligible rates for black and Puerto Rican households taken together.

It shows the eligibility for black, Puerto Rican and white households is five times as great as black and Puerto Rican households.

What we're dealing with is all New York City rented households and the question is whether they would be eligible, whether they would be able to rent the average priced Lefrak unit in the smaller size that's available to them.

It's not absolutely the cheapest Lefrak unit available to them but it's close to it. The second line reduces the number of rented households by approximately, well, by half. It looks like the upper income half of each racial group in rented households.

Then it measures the percentage that would be eligible for Lefrak Apartments in the upper half of each income group of each of the racial groups of rented households.

It indicates in the upper income half of the rented population 51% of the white population would be eligible while 12% of black and Puerto Rican population would be eligible, approximately four and three times as great.

The third line moves in the somewhat more stringent assumption as I described might be applied to a single individual rather than to the average impact for all Lefrak units.

It appears as the same thing on the basis of the minimum size, minimum priced Lefrak unit. There's a double minimum.

So, this indicates a somewhat larger proportion in all the racial groups would be eligible to rent the cheapest possible Lefrak units in their family size.

The denial of racial differentiation is not as great as it was recently if we look at the bottom two lines and contrast it where it's still substantial.

For all New York City rented households, the eligibility rate is 34.7% as compared to eligibilities of 9.1% for black and Puerto Rican households.

The eligibility rate is 3.8 times greater than it is for the minority group households and given the bottom line as the upper income half of the population and the ability of the upper income half of the population to rent the available Lefrak Apartments, the small size available, that shows 74% of all whites have the income to be eligible; in the upper income

half of the black and Puerto Rican population, it is 22.8% that would not be eligible and the relative difference is three and two times greater than among the blacks and Puerto Ricans.

MISS BALEN: At this time, I offer Plaintiff's Exhibits 16, 17 and 18 marked for identification, into evidence.

MR. BRODSKY: I object on the grounds that none of the testimony and none of the exhibits involve welfare recipients and I think they are irrelevant to the use we're trying in this case.

THE COURT: Well, they will be admitted for whatever they are worth.

(Plaintiff's Exhibits 16, 17, 18 previously marked for identification, were marked in evidence)

Q Dr. Bickel, in your opinion, is the 90% rule, as applied to test rent paying ability, justified?

MR. BRODSKY: I object to that, your Honor.

THE COURT: On the grounds he is not permitted to give an opinion or what?

MR. BRODSKY: No. He's certainly not

permitted to give an opinion unless he's an expert on what it cost to run a building, what the expenses are, whether or not this rule is reasonably justified in order to have a tenant who would reasonably be expected to pay rent.

This man is not an expert in that field. I don't know. He has not so testified yet.

MISS BALEN: Your Honor, Mr. Brodsky seems to think that only landlords can say what rules must apply. Dr. Bickel is an economist. He's a specialist in this area. He has worked with data, Census data, and income ratios and he's familiar with the 90% rule and the way it works and he will show, I'm sure, he is familiar with all the writings in this area.

THE COURT: What do you want him to answer?

MISS BALEN: In his opinion, the 90% rule as applied to rent paying ability, is it justified as an economic rent?

THE COURT: Very well. I'll allow it for whatever it is worth.

A The degree of stringency in the proportion

of the population that is excluded by this rule, the way it actually operates, is so severe and so high, I'm unable to imagine on general grounds of business financial cost of operations and so on, how it would be justified to that degree of stringency.

There are, of course, numerous studies that have been done on household budget standards dealing with basic necessities, apartments, housing and those dealing with the minimum housing that's available in New York City that would be uncontrolled rents and so on.

On measuring the amount of income that a person would have to have in order to meet a minimum extent and an adequate, modest but adequate or minimum extent - in particular, applied to New York City housing and rental housing, the detailed Rand Corporation study that was done in 1971, '70 and '71, attempts to develop, does develop their version of a type of rental income ratio that would specifically be continued.

This was the main thing the Rand Commission was concerned with, specifically, about continuing to allow sufficient return to landlords and homeowners to cover the ful costs.

MR. BRODSKY: If I could interrupt. If the witness is merely going to testify about a

Rand study in which he didn't participate and knows nothing about except he read it, I would object on that ground.

MISS BALEN: We submit it's accepted text in the field.

MR. BRODSKY: As I understand his testimony, it's what he says, not what he did. Maybe I didn't interpret it correctly.

THE COURT: I thought he said if he took the Rand standards, the Rand figures and that which is available to you, it would come out this way.

If you want to attack Rand, you can. I think the only thing he can testify to is whether or not this is justifiable from the standpoint of his expertise, which is in economics so I am letting it in merely in that regard and not from the standpoint of the impact it would have on the legal merits but merely from an economic standpoint, as he says it, from years of experience in this area.

MR. BRODSKY: I understand but my point is in that regard that the witness doesn't have any experience in operating real estate

and really has his opinion, with all due respect to Dr. Bickel, as to whether a particular rental established is justified should not be admitted on the basis of expert opinion because the man simply is not an expert in that field.

That's my point.

THE COURT: I see. Very well. It will be admitted. You may proceed.

THE WITNESS: I'm sorry to be lond winded but what I'm trying to work up to is the Rand study and the methodology they developed was to explicitly bring in the family budget and family income and, specifically relate this as their estimate of the adequate income to cost.

It produced rent/income ratios which, following their methodology for developing rent/income ratios that do allow, explicitly, for all the basic needs, known housing needs that need to be covered and then saying, "How much could be allowed to go in rent and whether or not rental units, at the prices that Lefrak presently charges could be covered under those

incomes that are minimum but adequate incomes, for a modest, decent standard of living level.

Approaching that, I found it impossible in additional work to calculate what the necessary rent/income ratio would be, what the necessary elibililily rule would be that would allow people to rent apartments at the price that Lefrak charges and would allow them sufficient income apart from what they spend on housing to cover their basic necessities in other areas, as the Rand Corporation has presented these.

By the way, these are not due to original research on Rand but the Community Counsel of Greater New York, which has a long history of developing household budget standards, low to modest levels of living.

Now, in comparing the amount necessary for other basic necessities and the relationship between the other basic necessities, besides housing and the amount that's allowed for housing, as it was developed by the Rand Corporation and this is what Rand's distinctive contribution was because they were primarily concerned with whether the returns were high

enough to provide an adequate return to the owner so, using the relationship that Rand developed between rental and expenditures necessary and the minimum necessary for non-housing consumption of expenses that are necessary for a modest and decent standard of living and then seeing what total income that produces and updating that by use of the consumer price index for New York City, updating it so it's measured in purchasing power or measured in dollars of July to September, 1971.

It corresponds to the rental data from the Lefrak Organization. I was able to calculate what the implied rent/income ratio would be from that sort of procedure.

These also can be calculated for each given family size and they did it considerably by family size.

If we take a weighted average of family size, we produce a weighted average ratio of .374 .

What that means is that's the ratio between the Rand estimate of the minimum required earned gross income or gross income in the

usual sense in 1971 dollars to the average Lefrak rental costs for the minimum sized apartment that would be allowed for each family size in that same 1971 period.

A .37 rent/income ratio would permit a family to increase the cost of its basic necessities as well as to increase to cover Lefrak rents as they present exist.

What would be required here, of course, is a modest indication of the 90% rule because the rule that would correspond to that .37 rent/income ratio, using the method I used previously to see what the corresponding rule would be, would amount to a 49.4% rule.

In other words, put in the same terminology as the 90% rule, it would say a weekly net take-home pay would have to be sufficient to cover the 49% rule, roughly 50% of a month's rent instead of 90% of a month's rent.

Q Dr. Bickel, what do you mean by "weighted average"?

A Well, those rent/income ratios, when we're talking about an account of the income necessary to cover basic living expenses, have to be calculated

for each different kind of family.

There is an average for all families and it's rated for each size.

Q Are you saying the rent/income ratios vary according to family size?

A Yes. They vary quite substantially in terms of the usual ratio of rent to gross income. They vary from .19 for a family of six up to .29 for a single person household and the weighted average of those comes out to .25.

If we look at the ratio of disposable income as Rand calculates it and as Rand calculates disposable income, as I mentioned before, it's more narrowly drawn.

I would also deduct work related expenses as well as taxes and Social Security withholding but that ratio of rents to the necessary disposable income to cover all basic costs ranges from .24 for a family of six up to .46 for a single person household.

The weighted average of that net rent income ratio, weighted by the different family sizes, works out to be .36 or 36% rent/income ratio.

Q Do you recall the name of the Rand study you've been referring to?

A "The Crisis in Housing." I have it in front of me. I can read it.

Q Would you do that?

A Rental Housing in New York City, Volume 1, "The Crisis in Housing" and Volume B-2 is called "Demand for Shelter."

MISS BALEN: Thank you. I have no further questions at this time.

CROSS-EXAMINATION BY MR. BRODSKY:

Q Now, I take it, Dr. Bickel, that you've never operated an apartment building. Is that correct?

A No. I haven't.

Q And you have no idea, from your own experience, what experiences of a landlord are with regard to renting ratios and how much people pay in rent and who is a good tenant from the standpoint of paying rent?

A Certainly. I have knowledge in that area. I can't claim to be an expert on that topic although I do have knowledge in that area. I have lived in apartments and so on, a knowledgeable economist. Put it that way.

Q You wouldn't consider yourself an expert in that field?

A Certainly not a specialist in that field.

I would feel capable of making informed judgments.

Q According to your statistical analysis, which, again, does not include welfare recipients at all, at least not as such? Is that correct?

A In what I've presented so far, however, I do have data which distinguishes welfare recipients from other households.

Q Maybe we will get to that but your testimony up until now does not involve that, correct?

A That's correct.

Q If you look at your Exhibit 16 - (interruption)

A I don't have it by that number.

Q It says "minimum size per family, Lefrak"?

A Yes. I have it.

Q According to your calculations there, 81% of all people living in New York City would be excluded from Lefrak Apartments; is that right?

A No, but 81% of all people renting in New York City.

Q Renting as distinguished from homeowners?

A As distinguished from homeowners and this is the household unit so it's about 81% of rented house-

holds.

Q That's of all people?

A That's right.

Q Whites? Blacks? Everybody?

A That's right.

Q And 75.9% of those same people who were white would be excluded; is that correct?

A That's correct.

Q And according to your files, 94.2% of blacks would be excluded; is that correct?

A That's correct.

Q Now, do you know of any actual statistics that have been made with regard to the racial balance of any Lefrak buildings?

A No. I do not.

Q Assume this for a moment, Dr. Bickel: Assuming there are 50 Lefrak owned buildings in Brooklyn and assume that there are approximately 5,000 units in those buildings in Brooklyn, would you tell me, by your calculations, how many of those units would be rented to blacks?

A Well, I don't know if that's possible or not. That would not be possible. That would depend on the past history of rental practices.

Q Using the 90% rule - I'm sorry - I didn't mean to interrupt you.

A The 90% rule applies to each time a person comes to rent an apartment.

Q All right.

Q What the outcome of that is in terms of these various population groups that might, potentially, be Lefrak renters is the analysis that I've given. Now, as to the past history and what the actual racial breakdown would be in Lefrak units, I don't know.

I'd be very happy to see it because that would be compared with those in New York City would would provide a different test as to whether or not Lefrak's practices have been discriminatory.

Q Let's take a different figure and maybe we can use this figure. Let's take the apartment buildings in Brooklyn, 50 apartment buildings, and using the 90% rule, let us assume that a total of one thousand applications, 1,836 applications for apartments were made - (interruption)

A Pardon me. How many?

Q 1,836.

A Over some given time period?

Q I'll give you a time, February 1, 1971 to

January 31, 1973. Now, can you tell me, using your calculations, how many of those units would have been rented to blacks?

A No, because we have no information here as to who is making the applications and what the income levels were. If we had that information, then using my calculations, yes, I could tell you what the predicted number of blacks, whites and so on that would be accepted would be.

Q You'd have to know how much money they make and what the size of the family is in each case before you could make these predictions; is that it?

A In order to provide a 90% rule based on income and the occupancy standard, based on family size, in order to apply that and make a prediction, yes, you have to know what the income is.

Q Can you take the 1,836 and using that as you did in your other charts?

A We can it corresponds to an entire population if we had any grounds for knowing it was any kind of a random sort identification.

Q Let's assume that it is.

A Let me get it straight. You're asking me to assume 1,836 people, which group is precisely represented

or generally represented or representative of the population by income, etc.?

Q As if it were a random sample.

A OK and the question is?

Q The question is: How many of those units would have been rented to black families?

A Yes. I can do it. I don't know if I can do it on the stand but in a moment or two.

Q Would it take you that long?

A I suspect that it would.

Q What would you have to do?

A First of all, we'd break the number 1,836 down into the proportions by racial group, if it's a random sample and the proportion should be the same in that small group as in the population, as a whole, and we'd break each of those into the different income levels that correspond to the income levels in the population, as a whole, if it's a truly random sample.

Then, we would have a count of the number of people in each racial group, in each income level.

Q But we don't know that.

A You're asking me what procedure I would follow.

Q You can't do that? You don't have those

figures?

A On the contrary, I have those figures from the Census and it would take longer than 10 minutes. It might take an hour.

Q Maybe we'll have you do that later. At any rate, I thought you were giving the impression and correct me if I'm wrong, using your Exhibit 16, for example, that if the 90% standard, as applied by the Lefrak Organization, were used for the general population, that 92.6% of black families would be excluded from Lefrak Buildings; isn't that correct?

A 94.2% .

Q Well, then, as a statistician, aren't you predicting - strike that - aware of the fact there are Lefrak Buildings in Brooklyn and Queens and different places?

A Yes.

Q Aren't you purporting to predict when Lefrak uses this standard that 94.2% of the black portion will be excluded from the building"

A In the initial sense, you know they don't qualify at all.

Q Then, they would be excluded if they don't qualify?

A That's right. I'm not predicting it. I'm saying, on the past historical data, that was the case and I assume you are presuming that hasn't changed very much.

Q Then, you'd also be saying in the buildings there would be less than 6% black families?

A Not necessarily because that depends on whether or not those people that knock on the door, of the 1,836, are a random sample or not.

In practice, they are not a random sample.

Q Could you recall numbers?

A Over 65%. It's not a question of being over. It's a question of whether the people applied to Lefrak for Lefrak Apartments, applied for entrance, did correspond to the divisions, the proportions of similarly situated people in the population.

There's no factual reason to support that. It would be a strange coincidence if they did.

Q Correct me if I'm wrong but I thought the purpose was to predict, more or less, what you would find in a given area; isn't that correct?

A That's right. The assumption you asked me to start with, that this was a random sample, I can tell you right now, without making a calculation, what

the relative proportions would amount to.

Q Why don't you do that, if you can do that quickly?

A Yes. Ican. If this is a random drawn sample from the population, then the proportion of those people who happen to be black and Puerto Rican, who would be excluded, it would be as indicated in these tables (indicating).

Q Which is what, 94.2% of blacks would be excluded?

A Yes.

Q The purpose of doing a chart like Exhibit 16 is, perhaps, not to be absolutely numerically correct but at least within some kind of guideline so reasonable predictions were this 90% rule would apply to blacks and whites and Puerto Ricans who were applying for Lefrak Apartments; is that correct?

A That's correct.

Q And one way to test whether or not it is accurate is to see what actually exists in Lefrak Apartments; isn't that correct?

A No. Now, you see you're making a statement that doesn't follow logically.

Q May I interrupt you a minute? What is the

purpose of prediction when you have the actual facts which corrects the prediction substantially?

A I don't know.

If we do or do not know of facts that correct the prediction, what the prediction says is that if a randomly drawn white household went to the Lefrak Organization, there would be a certain probability that household would be accepted and a randomly drawn Puerto Rican household, if they went to that Organization, there is a certain probability they would not be acceptable.

The only thing to disprove it is by some sort of a figure in which a sample of people that would correspond to known parameters, either random or some other way so that we knew what the family income situation or levels were, that the results were drawn from and this doesn't need to be so vague and hypothetical because the people that actually apply, you know, for any apartment rentals and so on, could be studied, could be surveyed in order to find out what the distribution of income, family sizes, and so on were.

Then, it would be just a mechanical matter of applying the 90% rule and presumably that's what the people in the Lefrak Organization do.

This wouldn't be an exciting experience because it would be repeating what they did when they decide a person is eligible or not eligible but the number that was accepted or excluded would depend on whether these three criteria, which are mechanical, on the characteristics I referred to, the parameters of that group of people that presented themselves there as applicants.

Now, I would suspect this is again an informed judgment or informed guess, if you will, that we would find the actual people, the 1,836, if we decided them with a highly non-random, highly biased section of the population, who undoubtedly have a higher income distribution than the population, as a whole, and that's why I narrowed it down to people represented in the price range.

Secondly, whatever the tradition is in Lefrak Apartments and I don't know what it is, that no doubt influences people who are potentially Lefrak owners.

If there are blacks and Puerto Rican income levels, unless always excluded, and other potential limits of those who won't go because they

know it's futile and pointless.

Q Is the reverse true?

A I think it can be fairly said the reverse would be true. The real problem here is our missing link in not having anything like a random sample and at the same time of not knowing what the whole group of applications are.

Q So you're saying you really can't make any prediction based on the reports you submitted unless you know, specifically, and with respect to each building who the people are, how much they make, how many people are in their families, whether they are black or white? Is that correct?

A Not quite.

Q You say "not quite"?

A Let me finish.

Q Go ahead.

A I'm saying if we talk about the population as a whole, or the population that represents the upper income and so on.

All the measures of populatinn I looked at or a random sample, a small group corresponding to those proportionate divisions or at groups that we know the characteristics of, in all those cases we can apply

our findings here and make what I'm sure would be pretty reliable predictions as to who is accepted and who is excluded but we have to have the parameters of what the applicant amounts to.

Is it the whole populatinn? The upper class of the population? A random sample and/or another group that isn't random?

Q You didn't take any of that into consideration in your records?

A What do you mean?

Q Who the people were in Lefrak, whether they are random samples, whether they are in buildings, as you put it, in buildings where more blacks would come, you didn't take that into consideration, did you?

A No. The object of my study was to find out how the criterion would apply to potentions of Lefrak owners.

Q Isn't it to predict, reasonably, how the composition of a Lefrak building is going to turn out, using the 90% standard? Isn't that what it is?

A Yes.

Q Let's stay with that a minute, if that's what it is. Can't we look at Lefrak buildings or 50 Lefrak buildings and if we have any numbers, compare that with

your numbers and see if the numbers are weighted way over?

A If that additional data you're talking about includes not only people who are renters in Lefrak but also all of the people who made applicatinn and were refused and also all of the people that might have made application, if they thought they had any opportunity of being accepted.

Inherently, that is an almost impossible data to gather.

Q Are you putting in your data people who thought in their mind they'd like to apply but didn't apply because they thought they couldn't go in?

A Implicitly, I am. My data applies to all of New York City and I'm sure there are people like that.

Q You're saying, because of the factors you mentioned, such as segments of the population who think they shouldn't apply because they can't get in, and other factors you mentioned, that you can't reasonably predict what would happen in Lefrak Village from the report you made?

A On the contrary, that's the objective. On the basis of the entire population of potential Lefrak renters we can apply, precisely, my findings and I'm

sure there is a percentage up or down.

Q I'm not talking about that.

A If you're talking about the whole potential of Lefrak renters, these should be the appropriate findings to apply.

That's the potential I had in mind in developing these.

Q And when you applied at least to who was in the Lefrak building, we should come out, more or less, in a wide range just the same, shouldn't we?

A No.

Q Why?

A Because you're jumping over the whole process of rejection and acceptance and so on and using the group that made it, those that made it in the building and we don't know what original population group they came from, in the sense of what applicants.

Q Let me give you those numbers from the applications taken. We have 1,836. I told you that. Now, we'll assume that 1,292 leases were signed from those applications.

Does that help you now in predicting the make-up of the building?

A No.

Q I thought that's what you just asked me.

A If you can't give me that figure, 1,292, broken down as to race and family size and, also, sir, if you could give the data, we'd have 700 or some that would be refused.

Broken down and in addition, if you could give me data as to who didn't even become applicants because of what action they expected, maybe rightly or wrongly, then we could make the prediction.

Clearly, that is impractical.

Q Impossible.

A That doesn't mean these findings are irrelevant. It means the end product ends up with findings on the one hand, the simpler part of which is the mechanical aspects of these eligibility rules and, on the other hand it depends on the much more complex interplay of all the social and psychological factors that lead people to want to become Lefrak renters or who feel they have no chance and they wouldn't even try.

Q Do you have any information on that?

A No.

Q In trying to isolate it, if I can, even in broad parameters, the number of people in apartments in your chart, the black exclusions, you run from eighty-

eight on the low side, 88.9% for two persons for 95.9% .

Can we isolate the number of people in the apartments and say we're going to have eighty-eight and ninety-five percent of blacks excluded?

A Again, we come back to the same point. If those people, who came as applicants, represented the random sample, yes.

Q Do people walk around as random samples? They don't do that, do they?

A No.

Q If it's worth anything, it's worth something upon which to base a prediction and you say we can't? What can we do with it?

A We can make predictions.

Q You can? You mean we can only predict it if a random sample of the population, according to the sample, comes to a random sample of Lefrak buildings with a random example of income and then and on that, then, can we use this? Is that right? Is that what we're using?

A No. Then and only then can we use the chart to generate the predictions you're asking, which is the specific portion of Lefrak renters, as such.

Q Bus any other way, if something got

changed around a little bit, if it wasn't exactly the random sample of income, then this is worthless?

A No. That's absolutely not true.

Q Can we use it within a range or 10% or 20%, the range of error?

A That's not the problem. I'm sure there is some error but I'm sure it's much smaller than 10%.

Q All right. 5%. Can we predict some kind of a range?

A Yes.

Q What is the range?

A The question is as to whether we can predict the analysis? And you're proposing to me a different question and I've told you, as best as I'm able, what kind of information one would have to have in order to predict the answer to your question.

It's an impossible question, in other words.

Q It's impossible to predict based on your chart?

A No. It's only impossible in terms of the specific question proposed to me. We can predict only on these charts.

Q What can we predict about Lefrak buildings?

A Well, we can predict this, that unless there exists some countervailing process, which encourages minority group renter households to present themselves as applicants to the Lefrak Organization in a higher proportion than randomly drawn proportions between minority groups and non-minority groups, unless there exists some sort of countervailing influence or process of that sort, that the proportion of minority group applicants who were accepted will be substantially smaller than the proportion of white applicants who are accepted.

Q You do predict that and you say "substantially." What does that mean?

A Note that is conditional.

Q I know. They are all conditional.

A Statistically, they can be measured and it's not due to a chance effect.

Q Let's measure it. Predict for me, if you will.

A A substantial difference in rates of eligibility, if you simply look at the relationship between the eligibility rate for whites and non-whites and the different assumptions I have made, they range from something like three and a half times eligibility rates for whites and for non-whites, in the least differ-

entiated example up to nearly ten times as greater eligibility rate for whites over non-whites.

That's what I would call substantial.

Q And you would then predict this would be a substantial assumption if there would be a given number of applications taken for blacks and whites, that there would be a substantial number of whites over blacks?

A Atain, it's the same question you've reiterated here several times.

Q I want to know what you're predicting. I don't understand.

A Without the additional knowledge as to composition of the group of people who present themselves as applicants, these relative rates of eligibility of rates and exclusions won't help us.

I'd rather put it the other way around. These rates of eligibilities and exclusions of the population, as a whole, cannot be used to predict the composition of the renters in Lefrak Apartments unless we also know the characteristics of those people who present themselves to Lefrak for that purpose.

Q So, as and by themselves, these charts cannot be used to predict the composition of Lefrak Village

Apartments; is that a fair statement?

A That's correct.

Q And, as such and by themselves, these charts can't be used to determine what the 90% rule does to the racial composition of the Lefrak buildings?

A No. There, I would not agree that's a correct statement mainly because-I'll go back to the statement I made slightly previously, that unless there is a substantial countervailing process or encouragement for the minority group people to become applicants to a proportionately greater degree in the population, unless there is that countervailing tendency in that direction, then these general findings are very likely, are very probable, - (interruption)

Q That's what I'm trying to find out.

A ...to give us an indication of the direction of the composition of Lefrak Village.

Q Assuming there is no such other motivation, in that case, the operation of the 90% rule, historically, over a time, would tend to produce a composition of building occupancy which unrented minority groups represent.

Q By 90%?

A No. Not by 90%. That applies to, let's see,

unrented, by proportion, of the whole population.

Q By how much?

A That's a somewhat difficult question. I haven't calculated it here. You see eligibility and exclusion is something that happens at the time the person applies.

You are now asking to predict a sort of a resultant population of tenants and so on and I'm thinking of that relative to the population as a whole.

If this sort of roulette of applications were used, historically, over a period of time, it would tend to produce a population that under-represented the minority group people.

Q By how much more?

A By how much more depends on what the situation was at ground zero when you started, how long a historical time period.

Q Just filling up vacant apartments and starting from zero, from zero to two thousand?

A That could be worked out but it's not a simple matter.

Q Can you do it, more or less?

A I don't think so because I haven't put my mind to that specific question.

Q The specific question I'm proposing is since I thought the thrust of your testimony on this 90% would apply, according to your direct testimony and correct me if I'm wrong, and there would be a substantial difference in the racial composition of the building?

A Not necessarily. There would be a substantial difference and the longer tenancy of that sort would result in a population proportion that would underrepresent those on the short end of the stick at the time of the application but the estimate of what the magnitude of the resultant population which occurs would be dependent on the form we're putting it in. It depends on the length of time the rule operates.

Q Take two years and two thousand. I want to give these things to you so you can predict from your charts. That's what I'm trying to do.

A That requires calculations not from the chart, which I think can be worked out, but not back and forth in this manner.

Q You can do it, more or less, within a range?

A No. I wouldn't hazard a guess on that.

I can tell you some of the general principles that apply.

Q Before you do that, would you hazard a guess there would be more whites in the building than blacks or wouldn't you know that?

MISS BALEN: Your Honor, I must object at this point. Mr. Brodsky continually assumes matters not in evidence and which cannot be proved such as he kind of jumps from buildings to what might be happing to applications in a two-year period.

I submit, unless those buildings started out as being completely vacant, aMr. Brodsky's questions are irrelevant and simply delaying this proceedings.

THE COURT: That's on cross-examination.

MR. BRODSKY: May I have the last question read?

THE COURT: Read it.

(The Reporter read the last question)

MR. BRODSKY: I thought you were introducing these charts so I thought the purpose of them would be to see how we can reasonably predict what would happen in the Lefrak building and now I'm asking you to produce and I'm asking

you, specifically, to predict whether we would have more blacs than whites in a building using this standard.

A Here, again, there are various qualifications as to whether or not there exists - (interruption)

Q Can you or can't you do it here now?

A The question posed in that simplistic manner? No. I can't give an answer without the necessary qualifications that would determine an answer.

Q The qualifications are on all your charts and statistics that you gave. I've used those.

A Plus a variety of different factors that would bear on the specific question you're posing in reference to the 90% rule as such.

Q Any way, you can't do it now? Could you ever do it?

A I suspect that can be worked out with the necessary assumptions referring to these various kinds of factors specified specifically. Then, it would be possible to predict what would result from the operation of the 90% rule, yes, but it's precisely the kind of things that have to be specified in explicit terms.

Q What are they?

A The very things we have gone over.

Q Let's list them over again for me. Statistics are just not my field and if I'm a little slow, bear with me.

What else would you need that you don't have in all the reports that you've already done?

A What we have in the analysis that we've done so far is the way the rule operates on specified population groups beginning with the population householdsin the way I suggested, - (interruption)

Q But if I may interrupt, but not in the way the rule actually operated as an application for the building. That, we don't have? Correct?

A This, certainly, is the way the rule has actually operated on potential applicants and renters of Lefrak Apartments.

That's what it's designed for. If now we move to the question of actual renters, we certainly need to have more pertinent information about the characteristics of those people.

Q OK. What would you like to know?

A Well, to begin with, for both groups, applicants and tenants, the racial composition, the income levels and the family sizes, the same data that I was working with for these broader population groups.

Q My understanding is the reason you did it this way is precisely because we don't have the information you said you needed and we could use the information you developed in order to predict the information I have to predict. Is that wrong?

A No. What we have here is to predict the rented households in rented households in New York City. Now, whether or not those rented households from the broader populations correspond to the people that knock on the doors of Lefrak, this is another way of saying whether or not the applicants are something like a real life sample of the whole New York population.

I don't know. If you will provide me with that bit of information, then I can use these findings which do have predictive values for potential renters of Lefrak.

If you can provide me with that, then it can be issued as a prediction.

Q We're not talking about one building or location. We're talking about buildings that represent 15,000, more or less, family units.

Would you say, because of the large size, that should make it easier than if you had one building on Park Avenue, for example?

A No. One gauge of the information about the applicants and tenants out of that whole group of 15,000 would be to probably draw a sample of that group in order to get a sample of that group.

This would require that information was recorded some place of those who were excluded and did not become tenants, their income and race and so on.

Let me point out one thing. Even if we had actual data on actual tenants, the one additional data you pointed out is actually impossible to get.

Q What about those people who were encouraged by the fact that Lefrak Village might be in the neighborhood where there were integrated buildings and the fact they had publicity, the fact that Mr. Lefrak takes people in his building?

Wouldn't that be a factor to motivate people?

A [illegible].

MR. BRODSKY: Off the record.

(Discussion off the record)

I would like to offer Defendant's Exhibit 6, for identification, in evidence.

We have gone over it, Miss Balen and I, and I don't think there is an objection to it.

MISS BALEN: Yes. We have also gone over with the defendant's counsel my request to introduction a Plaintiff's Exhibit along with that exhibit.

I'm referring to Plaintiff's Exhibit 26, marked for identification.

MR. BRODSKY: I offer both.

THE COURT: Very well. You have no objection?

MISS BALEN: No. As long as both are introduced together.

(Plaintiff's Exhibit 26, marked for iden identification, was marked in evidence and Defendant's Exhibit G, marked for identification, was marked in evidence)

MR. BRODSKY: Your Honor, Defendant's Exhibit G, now in evidence, is entitled "Racial Statistics Maintained in Borough of Brooklyn," Life Realty, for period covering February 11, 1971 to January 31, 1971.

Your Honor, may I recall that under the consent degree we did change our application in one respect. This is at the request of the

Government to see what would happen after the consent decree was executed. We did ask in the applicatinn the race of the person who was applying.

We had never done that before because it was of no interest to us, what a person's race was, so for this period of time only we do have specific statistics on the number applications which were taken of those people who were black, those people who were other than black, including Puerto Rican, and leases signed with respect to those people, the specific figures are as follows and I'm introducing it now because I do want to use it with this witness.

There were 1,836 applications taken in this period of these applications. 977 were black persons. For others we include Puerto Rican people and we didn't have a separate category for Puerto Ricans, which was 859.

Of the leases signed, 630 of the applications taken were executed by black tenants and 662 were executed by others, which includes whites and Puerto Ricans so that as to the results

there were 1,292 leases signed in this period in those 50 buildings in Brooklyn.

The result was that 48.7% of the leases signed were with black people.

Q Now, Dr. Bickel, you heard these numbers as I read them and I'll show you charts, if you want to see it, but the number of blacks that executed leases in that period of time was very substantially higher than anything you can predict from your chart. Isn't that so?

A No. Not necessarily.

Q In other words, you would predict from your chart that half the people who would execute leases would be black and half the people who would execute leases would be white?

A Not necessarily so.

Q If I can pin you down as to what you would predict maybe that will help us. How do you explain this phenomena which your chart indicates?

A What I would like to have along with that is the population proportions of black and others.

Q Where?

A In the relevant areas.

Q What are the relevant areas?

A These data you presented are for the Borough of Brooklyn.

Q Why didn't you ask these questions and do all this when you were doing this 90%?

Did you ever ask Miss Balen or anybody else to tell you the area that Lefrak is servicing?

A What do you mean? I'm aware which Borough Lefrak has apartments in?

Q You just said you needed the areas they were servicing. Did you ever make that request before today?

A No. I'd have to know the area, in which proportion they are.

Q Didn't you make this inquiry in making your study?

A No, since the question I was addressing was a somewhat different one.

Q You want to know the relevant areas they were servicing and let me tell you and it will be in evidence, that these 50 buildings are all over Brooklyn.

Now, you know that. Now, are you surprised at the result?

A I didn't say I was surprised. I said I'd like to know the racial proportion in that same area.

Q From Brooklyn?

A Yes.

Q What I don't understand is you didn't ask these questions when you were making your chart.

A There are many questions that can be proposed and answered.

Q I'm giving a specific number and now you're telling me in order to back it up into your charts you have to know a lot of information you might have used?

A As to whether or not there is a disproportionate high or low.

Q So that you have the area that's serviced?

A Yes.

Q You could have asked that before today

A Yes, if I had that information, I would have analyzed it and I would have done it by comparing it with the racial proportion in the area serviced.

Q Did you ask for the information?

A No. I simply used the information that was available to me.

Q You didn't request this kind of information?

A No. That's not part of the finding. In

providing the back up service, you can propose a lot of different kinds of answers in this area, if I recall, working on my own.

I was just going to reiterate if I had this information available - (interruption)

Q In other words, if the buildings were what you call more black than white, you would expect them to have more black tenants in the building; isn't that right?

A In and of itself, the fact that there are more black tenants in the building doesn't, in and of itself, tell us whether the entry requirements have been discriminatory or non-discriminatory.

Q Even if the buildings were 100% black, you would say that?

A No; that sounds like an absurd question to me.

Q Where do we stop?

A I didn't say the process of making measurements of racial proportions was absurd. I'm saying proposing a 100% indication might be absurd.

Where we stop? There is no absolute standard, of course, but a standard that has become torn more and more, even in civil rights, with regard

to questions of access, whether or not the end result after the access process has operated, produces racial proportions that maintains some correspondence to the racial proportions in the population that might be seeking access.

Q Do you have any figures there of people who are black in Brooklyn?

A No. I don't. Those are easy to obtain but I don't have them before me. What I would suggest, in effect, or what I was saying is the kind of analysis you're suggesting would be an interesting and important one to do.

Q But you didn't do it?

A No. If I had it, it, obviously, would have been important data and I would have used it.

Q Do you know if it's been available to counsel for the plaintiff?

MISS BALEN: Your Honor, I object. How could the witness possibly know that?

MR. BRODSKY: You might have told him that.

MISS BALEN: Your Honor, I object most strenuously. The question is objectionable in its form.

THE WITNESS: I already answered I didn't know.

Q Would you say this, that if the total population in Brooklyn of blacks is less than 50% and assuming these buildings are more or less located there and throughout this period of time and when approximately 50% of the applicants, as I said, were blacks, would that be a strong indication to you there was no discrimination?

A No. What are the relevant areas, boudaries of areas, especially the area of New York Metropolitan areas, which is just so large? Any one smaller segment of it could be, in effect, what can be called ghettos in Brooklyn, I may be not all of Brooklyn, but that racial segregation could exist in the section of the whole area but a particular subject area, as such, might not exist so then the question is: What is the relevant areas that the potential tenants are drawn from?

I don't know, as a factual matter, how much mobility there is, back and forth, within regions, in neighborhoods simultaneously.

I would assume there's quite a bit and if that is the case, then the boundary of the area in Brooklyn might be what Lefrak serves.

Q Take the New York City area. You've done studies on that. Take these statistics. Would you say this results in half and half, more or less, and would that indicate to you there's been discrimination in those buildings?

A This was over what period?

Q February 11, 1971 to January 31, 1973.

A Over that period in question and not referring to earlier periods, my impression, just from the magnitude of the data is if there were discrimination here, it was not of great magnitude to be able to judge whether there were or were not discrimination, even over this period.

We need to compare it with population ratios, to sophisticate it somewhat. I should think we ought to take into account the income limits.

That can be done But that sort of study takes a lot of calculations and is not something you can scratch out on a paper.

Q I know but the figures you gave are so high. More or less, you do get some impression from the information given to you, you have a broad background in this area and you're a very sophisticated person in this area, apparently, and drawing on the whole population of

New York City, drawing on the figures you used in testifying on direct examination and the same number of families and the same amount of income, you tell me whether you have an opinion, based on this number 74 (indicating) whether there's been discrimination of any sort?

A Well, discrimination still seems to be at its worst in several senses.

Q Are you dealing with abstracts or this number (indicating)?

A I'm talking about this number. It may exist in the strict racial sense in that what the population mix is in this whole area would need to be compared.

Q Can I stop you? You keep saying "population mix." I said to take the whole City of New York. Take whatever population mix you like. Take whatever you like.

A The unfortunate thing is I haven't got the figures.

Q You testified as to 2,700,000 households. Isn't that the total amount you're talking about in Exhibit 16?

A Yes.

Those could be used as a rough approximation.

Q Use it as a rought approximation?

A The second sense in which discrimination might exist, consistent with the figures you've shown and there are two senses in which it might exist. The reason I can't say definitely is this figure shows discrimination -

MISS BALEN: Your Honor, I must ask Mr. Brodsky to permit the witness to answer the question before he interrupts.

THE COURT: I thought he was.

MR. BRODSKY: Thank you.

A ...there are two other senses in which this figure that you have given me here can be consistent with discrimination.

One of the senses has to do, I should say candidly, with discrimination in a way not strictly racial but related to racial patterns. The formula inherently discriminates since what the formula does is establish minimum income levels that a person has to have and since those income levels are quite high ranging, up to $20,000. per year, per family, it clearly is a socio-economic discriminatory device. It excludes

everyone in the population below the really high income levels.

If we look at the borderline of the middle income levels and those most likely to be excluded by this sort of rule, we find that the operation of the rule apparently discriminates against people, against the taste that they have for quality housing as opposed to other items in their household budget.

In other words, people that are willing to take lower, how shall I put it, people who are not willing to sacrifice other elements in their budget, not willing to economize for food, clothing, recreation and so on, so that a relatively high proportion of their budget goes into those things.

Those people will not be excluded by the 90% income rule because they are quite willing to rent units in which a very small portion of their income goes for rent, 20% or less.

Q Are they white or black?

A Just a minute! I'll get to that. Both. People that are discriminated against in this 90% rule are those people whose taste patterns are such that they prefer to economize to a greater extent on food, clothing, transportation in order that they may purchase a higher

quality of housing, more housing, rooms and so on for their income level in the first group I referred to.

In other words, we have here people who have a taste for housing to a greater degree and are willing to spend and are able to spend a larger proportion of their income for housing and such.

Those are the people who are willing to pay 25%, 30% for good housing and who are discriminated against by the 90% rule. That's what the 90% rule does.

Q It's economic discrimination?

A Right. It's economic and it's a question of taste on the part of a household as to how it allocates its budget.

Now, the question is: Is that differentiated by race? We know that blacks and Puerto Ricans, in general, have lower incomes than whites.

In other words, the income distribution is lower than the distribution for whites. If you want the factual figures, I can give it to you but we know that.

Consequently, an average white person and a black person who want to purchase identical housing would not pay the same ratio of their incomes in

order to purchase it.

Q Because the blacks make less?

A Because the general income distribution is less for blacks, than for whites. He would have to pay a higher proportion of his income.

Q Do you call it economic discrimination or racial discrimination?

A The effect is racial discrimination.

Q Not economic?

A It's both but the effect is racially discriminatory.

Q And you say it's racially discriminatory even though it becomes half of the people looking for apartments who are white and half who are black?

A You're referring to a recent time period? You haven't told us what the previous history period was.

Q Do you know?

A No.

Q Can you predict?

A I can say if the whole previous history, over a number of years, is the same as this history, then there's no indication of discrimination, probably, but if this is recent history, it is quite different than

the previous indication and the position of renters would not be what it was in this recent period. That's one item.

Second, as long as the Lefrak Organization has been in existence, these ratios were consistent or similar and there still would be the sense in which the 90% rule inherently or with any stringent rule of this sort is concerned.

Because of the fact the economic position of the minority group population is still generally worse than whites, implicitly it also has then a racially discriminatory effect.

It discriminates precisely against those people in order to obtain better housing for those who want to arrange their personal budgets so they can economize on other things in order to put a higher ratio of income into housing and that phenomenon of putting a higher ratio of income into housing which often is not found in black or Puerto Rican populations of New York City to a greater extent than in the white population.

This doesn't necessarily mean the blacks and Puerto Ricans have a better taste for better housing than whites do. It could result from the fact that incomes are lower in order to achieve equal housing that

they have to pay higher and it's in this sense it becomes racial discrimination because if they want to achieve housing of an equal housing they have to pay more of their income because the average income is lower.

Q But he's in the same position as the white person making the same money, isn't he?

A Yes.

Q He's in the identical position, isn't he?

A If his family size is the same.

Q And his income is the same?

A And his problem is the same, sure.

Q And to the extent that's discrimination on this basis, it's a discrimination of white people who are economically situated in the identical way that black people are; isn't that correct?

A I'm sorry. Would you repeat that, please?

Q Under the figures that you're using and the theory that you're using with the white person making the same identical amount of money, with the same family and the same expenses as the black person, is there discrimination on an economic basis in identically the same way?

A If we look at dollar amounts of income, if we look at those two hypothetical individuals at the

income distributions of their respective groups, no; then, the discrimination is once again the black person, against the black person.

Q Against the individual persons? How do you come to that conclusion?

A Well, we haven't specified what the income was.

Q You say it's the same?

I'm giving you this: That the two people make the same amount of money; they have the same number in their household and the same expenses and you're telling me the black person is being discriminated against when we have the 90% rule.

A It's a sort of a funny question. Let's say he's accepted or excluded.

Q Didn't you say even under those standards the black person is being discriminated against?

A We look at people at the same income level in the sense their position in the respective income distributions. Then, the black man has a lower dollar amount of income.

Q I've given you the same income.

A Fine. If the dollar amount you specified is above the criterion, they are accepted and if below,

they are excluded.

Q You don't find anything in the statistics you showed me different in treatment accorded blacks and whites in that regard, do you?

Using my hypothesis, they are treated exactly the same?

A At the same income level and the same sized family and using gross income, from gross to net, there may be data that comes to bear on this. You said similar family size?

THE COURT: He said everything being equal, income, etc., the same, now, would it be discrimination?

THE WITNESS: No. In that case, if all the determining characteristics are equal, it would be equal.

Q Again, now, assuming by your statistics, just assuming this for a moment: Using your statistics that based upon reasonable predictions from the statistics that you used as to the entire population and this would be using the period I've given you, using that and we would reasonably predict there would be more whites, except for the Lefrak buildings under this 90% rule and then given the actual numbers themselves, would you come

to the conclusion there was no discrimination? Use my hypothesis.

A Now, the hypothesis doesn't apply because it deals with two single individuals.

Q Forget about that one. Use a different hypothesis. Say on the figures you did the calculations with then, we could probably predict, based on the entire New York City community, which you used in your own figures, that using the 90% standard, there would be substantially more whites than blacks. Let's assume that.

A I'm not sure that's accurate.

Q Using your figures, we can't tell whether there would be more or less whites than blacks in the Lefrak buildings.

A We're back to the question we were at before the break. Not unless we specify some of these other characteristics.

Q The main appropriate question I want to know the answer to is what to do with these charts - strike that - You say we can't reasonably predict, based upon your charts and using the 90% rule, that we're going to have in the Borough of Brooklyn more blacks than whites in these buildings.

Is that correct?

A I'm not sure what you mean by using my chart.

Q Using a chart that says using the 90% rule, 94.2% blacks will be excluded from Lefrak buildings.

That's your chart, Exhibit 16, and yet we find that in actuality, in the period of time from February of '71 to January of '73 half the people who applied to go into Lefrak buildings and were accepted with blacks and the other half that applied and were accepted with whites.

A I see the question. I'm sorry. I was missing the point. What we can predict from the combination of my findings, these factual findings and the factual progress, what we can deduce from that is something about the characteristics of the applicant's group or the population group in both the case of the blacks and the whites that were applying and accepted into the Lefrak building and what we can deduce is the following:

That the relevant population group from which the blacks are being drawn, if they are being accepted at a 50% rate is, relevantly speaking, a much higher segment of the blacks in the minority group.

up to 32% then of its income and so on. A six-person household could afford to pay up to 42% of its income

Now, I want to up date that. First of all, these figures are from the periods when Rand did its study which is from 1970 or somewhat earlier.

Q Before you do that, you are now taking disposable income. Before we were talking about gross income. I see the same Rand study talks about gross income.

Can you give it to us in disposable income and gross income?

A Certainly. If we look at the ratio of gross income, that would go for the rental payments in the sense of covering the full rental cost, allowing additional income that would fully cover basic necessities and allowing nearly 30% for the deductions from gross income.

Then, gross income and disposable income, between gross income and disposable income, the rent/income ratio, on a gross basis, would range from .19 for a six-person household up to .29 for a single person household.

In other words, the single person household could afford to pay 29% of their gross income

in order to cover rental costs.

Q Corresponding to the Rand study?

A That's correct.

Q And that's on a gross income basis?

A Yes. I still haven't answered how I obtained that figure.

Q All right.

A In order to make some application of these Rand findings to the situation of the Lefrak Organization, as such, in that period in mid-1971, it is necessary to do certain things.

First of all, to take account of the change in price levels that's occurred from the period that the Rand data was based on, which was 1967-68, they were expressing their income levels in 1967 dollars simply by using the consumer price index as it's calculated for the Bureau of Labor Statistics for New York City.

We could up date the income levels, and those are gross income levels, up to any future time period you wanted to and up date them to the 1971 period.

MISS BALEN: I must object to the posture of Mr. Brodsky looking over the witness' shoulder.

I don't know why he's doing it. It's a little odd.

THE WITNESS: It is a bit disconcerting.

MISS BALEN: What, possibly, could be the reason?

MR. BRODSKY: The reason is I want to look at the Rand study the witness is referring to.

Does it bother you, Miss Balen?

MISS BALEN: Yes.

MR. BRODSKY: I'll stand here (indicating).

THE COURT: Suppose you stand at the lectern?

A (Continuing) By using the Consumer Price Index for New York City, we can up date the gross income figures calculated by the Rand Corporation to find out what the comparable gross income figures would have been in the 1971 period, specifically the period July through September, 1971.

I used the Price Index figures for July, August and September of 1971 in comparison with the original 1967 figures in order to find the increase.

There was about a 28% increase in the price level so the comparable figures in 1971 would have

been $5,370. for a one-person family; $6,770. for a two-person family; $8,120. for a three-person family; $9,360. for a four-person family; $10,670. for a five-person family and $11,950 for a six-person family.

Now, that should represent the same gross income figures that Rand calculated, sufficient to cover full cost of rental property, including profits, sufficient to cover the basic necessities, apart from housing that go into the family budget and sufficient to cover the deductions from gross income of nearly 30%.

Those figures are now on the basis of the July through September, 1971 period and now to make those relevant to the actual apartment rentals of the Lefrak Organization in that same period, well, they are comparable in the time period to the data we have on Lefrak rental prices and so we now can calculate the ratio between those gross income figures and the actual cost of Lefrak rental units, either the average cost of the Lefrak units or the minimum cost of Lefrak rental units.

I did both those things in terms of the gross income ratios. I would like to give you both the gross income ratio and the net income ratio, and in terms of the gross income ratio, those income levels compared to the average price of Lefrak Apartments in

that period of 1971 would work out to an average to be .374 . In terms of the minimum cost of Lefrak units, the rent income ratio in that 1971 period would be exactly 30 or 30% of those income levels on an average which would be necessary to rent the minimum priced Lefrak units in that 1971 period.

If we transferred those over to net income ratios, again not taking into account all the possible deductions but, as I said before, taking account of federal withholding on this, then we would get to the net income ratios as follows:

The net income ratio at those income levels to cover the average priced Lefrak Apartment would be 46.7% and the net rent/income ratio to cover the minimum priced Lefrak Apartment averaged over all the apartment sizes, would be 37.5%.

Q That wouldn't be for welfare recipients, would it?

They'd have to take 37% because they pay no taxes?

A In the case of the welfare recipient, if we assume their gross income and the net income are exactly the same thing, that there are no deductions, then instead of 37.5, we'd have the same figure as

previously called gross income and that would be exactly 30%.

Q Thirty percent for welfare recipients?

A Yes.

If 37½% applies for working people, I'm saying if welfare people do rent in the minimum priced Lefrak Apartments for welfare recipients.

Assuming they have no deductions, it would be a 30% ratio of their income that's necessary to rent the minimum priced Lefrak Apartments.

Q Did you ever do any study on how much welfare recipients received, as compared to rent charged by Lefrak?

Have you ever done a rent/income study with reference to that?

A No. I did not study incomes of welfare recipients, as such. This is not my original work but I do have, from the Rand study, which does show the rent/income ratio of welfare recipients, as they occur in New York City, and I can give you those figures, if you want me to.

Q No. I believe we can save time if you stay with my questions.

Did you do any study as to comparing how

much welfare recipients receive and what percentage of that income they would have to pay in Lefrak buildings?

You didn't do that?

A No. I didn't.

Q If I told you those percentages varied from about 53.5 to 69.7%, what would you say?

A I would say that is substantially higher than the figures in the Rand report.

Q Higher than the figures in the Rand report?

A Yes.

Q Indicating that, even under the Rand study, with those figures, they couldn't afford to pay those kinds of rents? Isn't that correct, and meet their other needs for food and shelter? Isn't that correct?

A Well, if you're referring to just fixed income people?

Q We're talking about welfare recipients now.

A That opens up the whole question of how the rents are paid for.

Q Please assume the welfare recipients are on a fixed income.

A On the same basis as other people.

Q And they paid no taxes and I give you this as an assumption. If you take the welfare recipient income and they pay no taxes, if you applied a rent/income ratio, how would it come out in the Lefrak buildings with 53.5% of their income and at the highest 69.7% paid as rent?

Then, wouldn't you say, under the Rand study, those people wouldn't have enough left over to clothe themselves and to feed themselves?

MISS BALEN: Objection, your Honor. This is a defective hypothetical assumption.

MR. BRODSKY: "Defective" what?

MISS BALEN: I consider it a defective hypothetical assumption of the facts, which is not true. You used terms which are loosely used and hypothetical. I submit it's impossible to analyze.

THE COURT: Well, I think anybody can take your hypothetical question and figure it out.

MR. BRODSKY: I'd like to have his opinion based on his study. He looked at the Rand report and study.

MISS BALEN: That's not the problem.

MR. BRODSKY: I want him to say, based on the Rand report whether these people would have moneyleft over for food and for clothing.

MISS BALEN: Your Honor, I object. There are no such people.

MR. BRODSKY: There are now such people.

MISS BALEN: The witness has said he has not decided this area. Now, Mr. Brodsky is trying to take advantage by posing a hypothetical question, which is absurd and has absolutely no relationship to the facts, which is completely irrelevant and I think the witness should not be asked to answer such a defective hypothetical question, which can add nothing to this case but simply delay things.

THE COURT: I understand Mr. Brodsky is questioning that public assistance people do not pay taxes.

MISS BALEN: Mr. Brodsky is not a witness, among other things.

THE COURT: He's putting this as a hypothetical question.

MISS BALEN: Part of the hypothetical is in evidence but such things as 69% of rent income

and 53%, rent/income ratios, there's nothing in evidence on them.

THE COURT: I take it the witness will testify?

MR. BRODSKY: I represent to the Court that my witness will so testify. These are precisely the figures my witness will testify to.

THE COURT: The doctor seems to be pretty well qualified.

MISS BALEN: What I'm objecting to is comparing as the same welfare and fixed incomes, which they are not. This is a matter of statutes and regulations.

THE COURT: By the facts, he can point that out. All he's asking this witness is as to income, a hypothetical question, which he tells me he is going to prove. I don't know if he will or not.

Well, to the best of your ability, you may answer the question.

A As I understand it, you're asking me to consider people with absolutely fixed incomes and with no other source of real income that doesn't show

up in cash incomes. In other words, no food stamps, no health care. In that situation, but that situation alone, then the two ratios you've given me, 53% and 69%, I would judge they would be too high to cover basic necessities unless there are other elements.

Q Dr. Bickel, are you familiar with the Labor Department study, with any Labor Department study on how much people pay for rental income, in middle income and low income categories?

A Yes. I am. The survey of Consumer Expenditures.

Q Are you familiar with this particular study marked Exhibit E for identification, dated June 23, 1973 (indicating)?

Q I'm generally familiar with the city worker family budget as calculated by the statistics.

Q Are you familiar with the fact these Labor Department studies in the middle income area or low income area show they spend, more or less, 20% of their income for that?

Are you familiar with that fact?

A You won't find that fact in that study you have in your hand because the city worker family budget is standard, a real hypothetical standard based

on a market basket of goods which the BLS and its experts have put together to try and represent a typical possible budget for an urban worker family at just about the medium income level.

Q And shows about 20% for rent?

A Yes, but that's not factual data that people at the medium level pay for rent. It's built into that family budget by the BLS, which the BLS has created to use as a standard.

MR. BRODSKY: I have no further questions of this witness at this time. If there's any redirect, I'll wait.

MISS BALEN: Yes. I have redirect.

THE COURT: We will recess for lunch.

(Whereupon the court was in luncheon recess from 11:30 a.m. to 12:30 p.m.)

Proceed.

REDIRECT EXAMINATION BY MISS BALEN:

Q Dr. Bickel, I show you Defendant's Exhibit G (indicating). Do you recall having testified about the numbers shown on that table?

A Yes. These are the figures that the counsel presented yesterday as to the number of applications taken over the period, February, 1971 to January, 1973

at Lefrak Apartments in Brooklyn and the number of lessees signed over the same period for the same apartments.

Q Looking at that, now, does it say anything about the racial and ethnic composition of the apartments in the building or buildings involved?

A This only tells us the racial composition of the people that entered apartments during that period. It tells us nothing about the overall position of those buildings or what the racial composition is in the building or buildings or what the racial composition is in all other Lefrak Apartments.

Q Does Exhibit G say anything about how many buildings are involved?

A No. It doesn't. There's a pencilled note in the upper corner. Does that count? The mimeograph part doesn't say anything.

Q Does Exhibit G say anything about how many applications were taken for any one building?

A No. It doesn't.

Q Does Exhibit G say anything about the racial and economic position of tenants of any one building?

A No. It doesn't.

Q If I tell you that the rental agent for Lefrak Buildings in Brooklyn do not accept applications for apartments until the potential applicant demonstrates in an oral interview that he can meet or probably meets the 90% rule and looking at Exhibit G, is there anything in Exhibit G that states how many ~~how~~ many people were screened out by the Rental Agents in this process?

MR. BRODSKY: I object to the question, your Honor. It assumes a fact not in evidence, which is the Rental Agents, themselves, screening out people who fall below the 90% rule.

MISS BALEN: On the contrary, it is in evidence on the portion of the depositions introduced, particularly Rita Gelman (phonetic spelling), the Manager of the Brooklyn Life Realty Office, which represents the Lefrak Organization in Brooklyn - on page 11.

While we were going through the questions, questions which have all been introduced, questions concerning the interview of the prospective tenants, Mrs. Gelman was asked:

"Now, suppose an applicant applies for

an apartment, and you realize his income is insufficient and you tell him to get a guarantor and he says he can't get a guarantor, all of this in the same conversation, do you still take his application and if it is too low - " that's page 11 -

THE COURT: I'll let it in.

A Would you repeat the question?

MISS BALEN: Would you read it back?

(The Reporter read the last question)

THE WITNESS: No. It only refers to the number of applications taken and the number of leases signed.

Q Dr. Bickel, in your study of the effect of the effect of the 90% rule, why did you include all rented households in New York City in measuring that effect?

A This also raises the question of whether the difference in racial proportions in the different boroughs - (interruption)

THE COURT: Just answer the question: Why did you choose it?

THE WITNESS: On the general grounds that

Lefrak Apartment buildings are located in most of the boroughs of New York City and that, considered as a rental market, the city as a whole, is probably more appropriate than any particular subdivision within the city since there is a considerable degree of mobility.

I can't testify as to the exact figures here although this has been studied. There is a considerable degree of mobility among boroughs within the city.

Consequently, there's no basis that I could see for segmenting the city and only dealing with part of it since the objective of the study was to measure the impact of these policies on rented households in general that could be potential occupants of Lefrak Apartments.

In giving consideration to the question of whether or not the results of the calculations would have turned out to be different if I had looked at the thing, borough by borough and then aggregating it, I believe that the results would not be significantly differ-

ent even though the racial proportions differ from borough to borough; that is, the number of minority group people in each borough is in a different proportion to the total.

The key thing is not that fact, as such, but the question of how the income distributions compared to the minority population compared to the whole population and that relationship may vary from borough to borough but I wouldn't expect that it would vary so much that it would substantially change or reverse these findings.

It would have tc vary so much that in a particular borough the average income or the incomes from minority people would have to be equal or higher than the incomes of the white people.

If that were to happen in a particular borough, then the overall effects would be inaccurrate for that borough but that's what it would depend on and if the patterns of income distributions are, more or less, similar, that is, the relationship between the minority group income distribution and the white people's

income distribution is more or less similar among the different boroughs, whatever the proportions of population are, then these figures would be applicable to any borough taken by itself.

Q Dr. Bickel, I show you Plaintiff's Exhibit 16 (indicating). Now, using Exhibit 16 as an example, in your study of the effect of the 90% rule, what did you mean by your use of the terms "excluded" and "exclusions"?

A By my term "excluded," I meant excluded from Lefrak rentals. This refers solely to the impact of the 90% rule and of the whole methodology we've been describing on each type of family.

In other words, it means for the population of potential renters would not qualify as the result of the application of the 90% rule.

Q By "exclusion" or "excluded," did you mean only those who actually made application to Lefrak for Lefrak Apartments and were rejected?

A No. Certainly not. It would be those people but it would be all others who had applied who would have been rejected as the result of the application of the rule.

Q Now, in your previous testimony and cross-examination, you answered that an income standard applied to welfare recipients and working people as being more liberal as applied to welfare recipients and tax deductions.

Bearing in mind of what you know of Lefrak renting levels, by "more liberal," do you mean the recipients are going to get Lefrak Apartments easier?

A I'm not sure I understand the question. I'm sorry. Can you rephrase it?

Q Considering welfare recipients' income and Lefrak rentals, could you tell me, please, with respect to your previous testimony about the relative liberality of the income requirements that involve tax deductions whether, on the basis of any income standards of that sort applied to Lefrak Apartments welfare recipients are going to get apartments easier or more frequently than working people with middle incomes, let us say, low incomes or high incomes?

A This is another of those types of questions that needs to have all the elements that enter into the things specified before I could give a definite answer but there is the one general fact brought out that since welfare recipients, as such, do not pay taxes

a rent/income ratio of say 25% applied to welfare recipients, as such, would be approximately equivalent to a rent/income ratio of 20%, as applied to wage earners, as such, in that sense of a welfare recipient or other retired person, whatever, that did not have taxes deducted, would, in that sense, be able to pay a higher proportion of their gross income, which is almost the same as their net income under the rule than would be the case for a working person in which the difference between their gross income and net income is quite substantial.

On the basis of net income only, the rule would not favor welfare recipients or other retired persons and others with small or no tax payments but, on the basis of gross income, it would give them a relative advantage as opposed to wage earners that had a lot of income or earnings, as related to expenses.

Q Do you know the eligibility rate or have you calculated the eligibility rate of welfare recipients as applied by the 90% rule, as applied by Lefrak?

A I have a rough estimate of it, based on data from the 1968 Housing and Vacancy Survey and it was calculated on the Rand study I referred to previously. This is Volume Two and it appears on page 63 and this

simply shows the rent/income ratios of rented households in New York City broken down into the two sub-categories of welfare recipient represented households and non-welfare recipient represented households and it shows that the rent/income ratios actually being paid by those two groups of people were in New York City.

It shows that if net income ratios of 25%, which we said is probably the more appropriate for welfare recipients, were to be considered, they would be excluded if that were used as an eligibility criterion.

That would exclude 78% of all welfare recipients. In other words, 78% of all welfare recipient rented households were paying more than 25% of their income for rentals.

Q Dr. Bickel, perhaps you didn't understand the question. What about the 90% rule as used by Lefrak? Do you have any calculations on that as it would relate to the eligibility of welfare recipients for apartments?

A This corresponds, as closely as anything that could be calculated since the 90% rule, if it is applied to someone who does not have the earning related expenses, the tax deductions and so on, as was brought out previously, would correspond, roughly, to a 25% ratio of rent to income so I believe that does give a

rough correspondence to what the effect of the 90% rule would be applied to welfare recipients, as such.

Q With all that's been said about these standards and various ways of reducing them to numbers, in your opinion, is there a reasonable way to calculate such a standard?

A Well, in my judgment, a much more reasonable standard could certainly be constructed more reasonably than the 90% rule, as it's used and in general, I think we can see several characteristics that would go into such a standard that would be more reasonable.

First of all, it would be a substantially less restrictive standard than the 90% rule presently operates under.

Just in general, this applies to all kinds of people. It will not be nearly as exclusive as the present standard is. If a standard were constructed that was less stringent, less exclusive in its effect, the racial differentiation of its impact would still exist but it would be lessened.

It would be diminished compared with the impact in its racial differentiating effect as it presently exists but apart from that, apart from the racial differentiation effect, just as a general standard,

it's clear that the 90% rule, as it's used, is so stringent, so restrictive, that it essentially skims off only the highest income portion of the whole population and it skips over or makes ineligible under the rule a particularly small proportion of black represented households and an even smaller proportion of Puerto Rican represented households.

It also limits eligibility for rented households to a very small percentage of white households, though not as small a proportion, in minority groups.

Secondly, a reasonable standard should have the double criteria that the Rand study took into account should allow sufficient rents to cover the cost of the housing and at the same time it should make sure that sufficient income is reserved to the family, to the household so that they can cover their basic necessities.

Now, one overall average standard for all kinds of households and all kinds of circumstances does that in a very rough, crude way.

It fails to take account of the differences in family size and the fact that the proportion of the income that be spent on rent can be considerably higher especially for the small family or even the single person

householder than it can be for larger families, as shown in the Rand study so that a more reasonable standard would differentiate according to the family size. That is, it would allow diffent rent/income ratios for different sizes; and

Finally, in some respects this might be the most important of all, a rent/income ratio that took account of basic differences in the sizes of families would certainly take account of the nature of their incomes and source of their income.

All of the questioning as to how much in deductions should be taken away from gross income before applying standards is relevant here and I think it's quite clear from that, that at least the differentiation between wage earners and people who are not wage earners but on some form of fixed income, should be built into the standard so separate income ratios would apply to those people.

Clearly, people who do not have work related expenses or who do not pay substantial income taxes can afford to have a higher rent/income ratio than those people who have the work related expenses and taxes to meet out of their total income.

One final point in this regard: For certain types of people, significant proportions of their total income, in the real sense, has to do with the various forms of public subsidies that are available to what, in economic terms, is called "real income lines." In other words, the benefit value of food stamps doesn't increase the goods purchasing power and if free medical care is available, it doesn't increase his cash income but does increase his "real income."

To be adequate and fairly measure the rents payable, a family in those circumstances, a rental income standard, would have to take account of at least in an average way or a rough way those real income elements that are available to certain categories of people and all of those things are things that can be done in a way that would be workable, as far as measuring, as far as having the data that would be necessary to calculate what the standard should be for these different categories of people because those data exist and administratively as to its being workable, I'm not prepared to testify but I would judge such a standard could be constructed that would be reasonable in that sense as well but as far as simply a standard that would more accurately assess rent-paying ability, that's all I'm addressing

myself to. It could be a lot less stringent and it should distinguish between family sizes, as such and it should certainly distinguish between the types of income to take account of what exemptions and deductions should be allowed and also what types of income might be present that don't show up in cash income.

Q Just one last question, Dr. Bickel: Do you know of any professional economist-statistician and economic researchers who are also apartment managers?

A No. I do not know of any. That doesn't mean there aren't but there may be.

MISS BALEN: That's all.

RECROSS-EXAMINATION BY MR. BRODSKY:

Q You, particularly, have never been an apartment manager?

A No.

Q And you don't know what would happen if the standards were changed to make them more liberal, as far as people being, perhaps, late in their rents, not paying rent and as to dispossess proceedings? You have no experience with that?

A No, but that doesn't mean I don't have any judgment as to what would happen.

Q I'm asking if you had experience as an

apartment manager?

A Not as an apartment manager.

Q As an economic Analyst, do you have any figures on that?

A Only in the most general sense. I don't have precise figures because, to my knowledge, precise studies of the rate of default in rents and things of that sort, by and large, it has not been done.

However, some general studies have been done and I have some knowledge on the basis of general studies and it's, more or less, obvious that the people at the lowest income stage get into difficulty more often than people at the higher end of the scale.

Q Then, it's obvious that it's more likely as to them if the landlord rents to them, the rent will not be paid; is that true?

A It depends on where the turning point comes, where the incidents of default on rentals begin to increase as a proportion of all renters, at what income level.

Q You don't know that?

A I don't know that and, to my knowledge, I don't think a study on that particular point has been done.

Q You said, when Miss Balen was asking you questions - strike that - Do you know the specific location of any Lefrak building?

A No. I'm not acquainted with New York City.

Q But you did say, on your direct examination, that buildings were located in most boroughs of New York City; didn't you say that?

A I've seen the locations listed in terms of the boroughs but I don't know where the boroughs are.

Q So, you don't know if there are more buildings in one borough than another?

A Well, yes. I knew they tend to be concentrated, as far as boroughs go, in two or three of the boroughs.

Q Which ones?

A This would be Brooklyn and the Bronx and I also should refer to Queens - Brookly, Bronx and Queens and as to the properties, that I don't know but, as I understand it, these are the three boroughs that have the most Lefrak's.

Q Do you have any idea of how many apartments are in Brooklyn?

A No.

Q Or the Bronx?

A No.

Q Or Manhattan?

A No.

Q No idea whatsoever?

A I wouldn't say that.

THE COURT: I have a rough idea. There are fifteen to twenty thousant rented units or households.

MR. BRODSKY: I have no further questions.

THE COURT: May the doctor be excused?

MISS BALEN: Yes.

THE COURT: Very well, doctor.

MR. BRODSKY: Is there any way we can have this report? We have never seen it.

MISS BALEN: It could be purchased for $3. We are not prepared to present him with the free copy.

THE COURT: He just wants to borrow it tonight.

MR. BRODSKY: I'll even rent it. Any way I can get it.

MISS BALEN: Then go to the Rand Institute and purchase a copy.

THE COURT: Counsel should be more cooperative than that.

MISS BALEN: I don't want to be non-cooperative but I want the report that the witness prepared that Mr. Brodsky has taken possession of.

THE COURT: It's been identified but it's not in evidence. Where is it?

MR. BRODSKY: What I wanted to do is use it tonight with our own people and to see if there's anything we can use in this case.

THE COURT: The only thing is you could talk about what he referred to. You can't turn in the whole report. You could take the parts he referred to.

MR. BRODSKY: Or there may be other things that may give us a clue.

MISS BALEN: Your Honor, this is part of our presentation of this case.

MR. BRODSKY: Might I finish what I have to say? I would appreciate it.

THE COURT: One at a time.

MR. BRODSKY: As I understand the liberal rules of discovery, there is no secrecy, espec-

ially in a case like this. If there's something in a report a man reports, it might give us a clue and if it might give us a clue as to a separate witness, I assume it would help the Court in deciding this case.

I don't know what the secret is here. I don't understand that. We don't have a criminal case where some witness may be gotten to. I can't comprehend this kind of objection.

MISS BALEN: On the contrary, in a criminal case, an investigation conducted by the prosecution, for example, would certainly have to be held in secrecy but in terms of Mr. Brodsky's procedure, Mr. Brodsky is talking about liberal rules free of surprise and I would call the Court's attention to the Federal Rules of Civil Procedure, Rule 26-b-3 on trial preparation and it states that only where the material is prepared for trial and cannot be obtained by the opposing party by making some diligent effort, only then can the material be given to them.

THE COURT: The material was used by the witness in direct examination.

MISS BALEN: But this has been shown to the opposing counsel. I believe that is all that is necessary by the rules of evidence.

THE COURT: I don't want to have to press to let him examine it.

MR. BRODSKY: That's the point.

THE COURT: He's not going to destroy it, change it or alter it. In that event, I'm going to let him have it overnight, if he will return it tomorrow.

MR. BRODSKY: Absolutely.

THE COURT: And the only part he'll be able to go into is the part we went into.

MISS BALEN: We have no intention of calling this witness again.

I think the defendant's attorney wants to prepare his own witnesses and I think that's what the rules refer to.

THE COURT: I'd rather think the part the witness used would be applicable to any witness Mr. Brodsky wanted to prepare.

If I'm in error, I'll stand corrected and I'll throw it out. I'm satisfied that would be the ruling.

MR. BRODSKY: May we have also a direction that we may use the other report, that Dr. Bickel used, overnight and return it tomorrow?

THE COURT: Would that be possible, Miss Balen?

MISS BALEN: Yes. Can the doctor provide the copy?

THE WITNESS: This is my only copy but I'll make it available.

THE COURT: You will return it to the doctor?

MR. BRODSKY: I'll return it to Miss Balen. Is that all right?

THE WITNESS: Just as long as somebody puts it in the mail.

THE COURT: Thank you, sir. You have been very patient.

THE WITNESS: So has your Honor.

THE COURT: Perhaps we have both been too patient. Suppose you leave that copy with Miss Balen. She will make it available to Mr. Brodsky.

MR. BRODSKY: At this time, I have a short

motion. I move to strike the testimony of Dr. Bickel on the grounds we are involved here, as I understand it, with a class, set by Judge Weinstein, of welfare recipients in the Manhattan area.

Dr. Bickel testified on cross-examination he really did no studies on this, did not involve welfare recipients at all.

His studies involved the New York City community at large and there is a substantial difference or distinction between the two.

I think all of his testimony, therefore, is irrelevant and immaterial to any of the issues in this case and I move, at this time, to strike all of it.

THE COURT: I think it's premature. You can make it later.

(The witness was excused)

You may proceed.

MISS BALEN: Plaintiff calls as the next witness Martin Burdick.

MARTIN BURDICK, after having been first duly sworn, testified as follows:

THE COURT: Give your name to the sten-

ographer.

THE WITNESS: Martin Burdick.

DIRECT EXAMINATION BY MISS BALEN:

Q Mr. Burdick, what is your address, please?

A 250 Church Street, New York City.

Q Are you presently employed?

A Yes. I am.

Q In what capacity?

A I'm the Director of the Income Program for the New York City Department of Social Services.

Q How long have you had that position?

A Approximately one month.

Q What are your duties and responsibilities in that position?

A I'm responsible for the administration of public assistance programs under the Financial Assistance Program in New York City areas.

Q Were you employed there before you held that position?

A Yes. I was.

Q In what capacity were you employed?

A Deputy Director of the Income Program for the same Department.

Q For how long did you have that position?

A Approximately a year.

Q Were you employed there before you held that position?

A Yes. I was an Executive Assistant to the Commissioner of Social Services.

Q And before that, Mr. Burdick, were you employed?

A I was the Supervisor in the Department of Social Services and had other related positions in the Department of Social Services for approximately 18 years.

Q You have been say you have been employed by the Department of Social Services for 18 years?

A That's right.

Q To your knowledge, does the Department of Social Services keep records of the total number of welfare recipients in New York City?

A Yes. It does.

Q How are those records kept?

A They are kept by statistical sections in the Department generated from a variety of sources within the Department.

Q This is the number of public assistance recipients?

A That's right.

Q I show you Exhibit 22 marked for identification and I ask you if you recognize it (indicating)?

A Yes. I do.

Q Would you tell us what it is, please?

A Yes. It is a work sheet which I had prepared by my staff sometime last year, I believe November of '72 reflecting the public assistance cases and persons receiving assistance by or from the Welfare Center in New York.

MISS BALEN: I offer Plaintiff's Exhibit 22, marked for identification, in evidence.

MR. BRODSKY: May I ask one or two questions about the exhibit, your Honor?

THE COURT: Sure.

VOIRE DIRE BY MR. BRODSKY:

Q Mr. Burdick, this document doesn't purport, in any way, to be dealing with any Lefrak building, does it?

A No, sir.

MR. BRODSKY: I object to it on the grounds that the total number of welfare recipients in New York City is irrelevant.

MISS BALEN: I submit it's most relevant

as to the class and the issues that may come up.

THE COURT: It will be admitted for what it is worth.

(A work sheet previously marked Plaintiff's Exhibit 22 for identification was marked in evidence)

EXAMINATION BY MISS BALEN:

Q Mr. Burdick, do your knowledge, does the Department of Social Services keep records of the names and records of public assistance recipients in New York City?

A Yes. It does.

Q What records are kept of this information?

A We have case records. We have records by addresses and we have records by alphabetical sequence, numerical sequence.

Q How are those records kept? In other words, how are they put together and how is information reco ed in them?

A The basic records are kept in individual centers and they are kept in bins. The case records are kept in one set of bins. The address files are kept in another set of bins.

Two sets of address files exist consisting of a three by five file of addresses and a five by eight file of cases.

Q Are those records kept current for different periods of time? Are they kept for a year? A month? Or a day?

A They are updated as changes are reported to us.

Q Are those records kept for a particular purpose of the Department of Social Services?

A They are kept for audit traces and as a means of identification.

Q Are these purposes ordinary purposes or regular purposes of the Department of Social Services?

A Yes.

Q Did you ever have occasion to inquire as to whether there were any public assistance recipients living in buildings owned by the Lefrak Organization?

A Yes. I have.

MR. BRODSKY: May I note an objection here? As I understand it, the names of welfare recipients are confidential by statute and we went through this in a deposition and that's the reason I knew it was coming and that's the

reason I want to voice my objection at this time.

When the figures, which Miss Balen is going to introduce about the number of welfare recipients in Lefrak Buildings were requested by Miss Balen, I attempted to learn through Mr. Burdick what the names of these people are so we can learn, for example, how long they had been in the building, whether there are two families living in the apartment, whether these people are paying rents on time and Mr. Burdick's response or counsel's response for the City was that information is confidential so that what Mr. Burdick is going to attempt to testify to, as I understand it, are the addresses to which welfare checks are sent and then the conclusion would be that there are welfare recipients living in those buildings.

What I can't find out, your Honor, because this is confidential under the law, are the names of the people, how long they have been there, whether or not they have been paying rent on time and the whole history of what

this is about so I think that limited information, without me being permitted to go further, should be inadmissable at the trial and I would object to it on that ground.

MISS BALEN: Your Honor, the background of the particular evidence that Mr. Brodsky has referred to is that we have requested the Lefrak Organization to give us data concerning the number of recipients living in their buildings and they said they could not, except for the period of time when a consent order was in effect.

Now, what we intend to show, through this witness, is that we requested or we asked to know how many recipients were living in Lefrak buildings.

The witness then had or supervised employees under him, to go to the regular records of the Department of Social Services and count up the number of recipients in the building. The individuals who were supervised and, indeed, Mr. Burdick would know the purpose for which this information was sought.

There was no change in the records when the information was obtained, no alteration or interpretation was necessary.

Now, the new proposed federal rules of evidence states or suggests that the summaries of records, public records, which are too voluminous to bring into court, is an appropriate way of presenting the matter contained in them.

Where possible, the parties have an opportunity to examine them.

Now, in this case, it would appear there is no doubt the records are too voluminous to bring into court.

There are 43 welfare centers servicing 1,000,000 clients. Now, the hearsay rule would permit the introduction in evidence of any record or public record, any record compiled in the course of a regular activity of a particular business or organization or, in this case, a public agency.

The importance of the rule was its effect by its direct act of excluding that evidence, which was motivated by legislative fiat.

There was no reason to falsify the information in preparing the record. Even though it was done in the regular course of a business activity, I submit in this case there is no such motivation for changing or altering the evidence that is going to be brought out by this witness for litigation purposes.

This is a case in the Second Circuit in which an accident report which, of course, is the most controversial sort of document or record, was permitted to be introduced, where it was prepared for purposes other than the one ultimately used for (Taylor v. B & O Railroad, 344 F. 2d 281 (2nd Circuit 1965), which is for, I submit, if the evidence he produced will be in that category and he did not know, therefore, what purposes the information would be used for.

I have one more point. The names and addresses of public recipients are confidential, as required by the Social Security Act and I can give the Court citations of the statutes and I would like to direct the Court's attention to the first portion of that 18 NYCRR, Sec-

357, 3 (F) (3), which deals with the situation where the names and addresses of public relief recipients are protected by courts and it says where this happens and the purpose is not directly related to the administration of public assistance or the protection of a child, the agency shall withhold information obtained under the Social Security Act, the Social Welfare Law and protect disclosure of confidential information contained in records and files, including names.

The agency will be governed by the following:

Final order of the Court after the plea is made.

MR. BRODSKY: If Miss Balen is finished - I'm not objecting to the grounds the records are too voluminous or that a search was inaccurate. I'm simply objecting on the ground the offer of evidence is incomplete and I have no way of getting the complete information, which we would need in order to make this relevant in any way.

All this shows, I think, is that from

their records, welfare checks were sent to certain apartment buildings. That's all it shows.

Where do we go from there if we don't know who the people are, how many people were in the apartments, how long they have been there, how long they have been on welfare, whether or not they are paying rent, whether or not they have been paying rent on time, whether or not they have been evicted.

We don't have any of it.

THE COURT: You don't have it?

MR. BRODSKY: No. Absolutely.

THE COURT: You have a record that they are on assistance?

MR. BRODSKY: No. Absolutely not. The only time we have a record of it is during the period subsequently.

When a person comes into the building, a person, ordinarily, is not on welfare. If a person goes on welfare, we have no way of knowing that and a person may go on welfare and move out of the building on his own.

We have no way of knowing that.

THE COURT: When a person comes in to rent I thought you asked him what income he has and then they would say if they were on public assistance?

MR. BRODSKY: Oh! Yes. We have. In a sense, the consent decree was entered into.

THE COURT: Why don't you give her that?

MR. BRODSKY: She has that but before that, before anybody comes to our apartments, they would be, for the most part, I think probably exclusively, people - assuming they were people in our building - people who weren't on welfare.

After they were in the building, we have no way of knowing that. We have no records of the people.

People don't announce that. We don't require people to tell us what happens. As long as they are paying the rent on time, that's all we care about.

THE COURT: I understand. Quite often, if not all the time, they will tell you they were on assistance and you would require co-signers?

MR. BRODSKY: That's only when they come in, initially, to rent the apartments but I assume these would be people on this list to the extent they are in the building, people who weren't on welfare, to start with.

THE COURT: Is that the rule, that the checks go to the residence of the person on welfare?

MR. BRODSKY: Yes, your Honor.

THE COURT: Why aren't the numbers admissable, not the names?

MR. BRODSKY: I think the numbers are meaningless, depending on what they want to prove.

THE COURT: It's a very accurate list of the number that are in your apartments. She is not able to get it anywhere else.

MR. BRODSKY: It depends on what the evidence is coming in for. If it's coming in to prove that welfare recipients can pay the rent, that's what I object to because we don't know how long they have been in the building, whether they are paying rent on time, whether they have been evicted. We

have none of that information so if I knew the purpose of the proof, if it's just a number, as to the relevancy to the plaintiff's case. I don't know the relevancy of it.

If it's coming in to show that welfare recipients are in the building and can pay the rent, I think it's inadmissible.

We don't know that from the records about their being in apartment buildings and it comes to the building and not to a particular department.

The only information here is that the checks are going to these addresses. You may have two welfare families living in one apartment, which would bring the income level up and enable them to pay the rent.

THE COURT: Your record would not show it?

MR. BRODSKY: No. Our records wouldn't show that, nor can we know from this what the history of these people are so if we can know the history - (interruption)

THE COURT: What do you need with the history?

MR. BRODSKY: If this is coming in to show

there are welfare families in the building, we don't know that.

THE COURT: It shows at the time this was made there were so many welfare people in your building.

MR. BRODSKY: That's all it shows.

THE COURT: That's all it's worth.

MR. BRODSKY: It doesn't show they were paying rent on time.

THE COURT: I suppose they are paying rent, if they are in the building.

MR. BRODSKY: I'm not so sure. It takes a while. You don't evict a person if he's in default for one month's rent. It takes time to do that.

THE COURT: What is your average?

MR. BRODSKY: How long it takes?

THE COURT: How long would you let people stay in the building after they stop paying rent?

MR. BRODSKY: About three months.

THE COURT: In this period, how long did it take to check their record, just for a certain period?

THE WITNESS: It's a point in time.

MR. BRODSKY: One day?

THE COURT: One day?

MISS BALEN: It was done twice.

THE COURT: What were the dates?

MISS BALEN: It was done, according to the witness, in late November, early December, 1972 and May of '73.

THE COURT: About six months apart?

MISS BALEN: Yes. Two different occasions and the evidence will show, through this witness, that the number of recipients went up, rather than down.

THE COURT: Do you have anything further?

MR. BRODSKY: No.

THE COURT: Very well. We will let it in for what it is worth.

Q Would you answer the question, Mr. Burdick? Did you ever have occasion to inquire as to whether there were public assistance recipients living in buildings owned or operated by the Lefrak Organization?

A Yes. I did.

I was approached by the then Assistant Director who gave me a list of buildings and asked me

to ascertain the number of cases living in those buildings.

Q Other than that you were asked to do it by this individual, did you know for what reason you were making the investigation for?

A No.

Q What was the name of the individual who employed you to do it?

A Miss B. Levine.

Q What procedure, Mr. Burdick, did you follow when making that inquiry?

A I asked one of my assistants to initiate telephone calls to each of the local centers and to make inquiry from an address file which is kept and to ascertain from that address file and number of cases solicited, as residing in that building.

Q Did your assistants, whom you mentioned, know the purpose of this inquiry that you were asking them to make?

A No.

Q To your knowledge, was there any alteration or interpretation of the record of the Department of Social Services in making that inquiry?

A No. There was not.

Q Did you request such an alteration or interpretation?

A No. I did not.

Q I show you Plaintiff's Exhibit 19, marked for identification and I ask you if you recognize it (indicating)?

A Yes. I do.

Q Could you tell us what it is, please?

A It's a list of buildings with addresses similar to the addresses on which I was asked to make an inquiry.

MISS BALEN: I offer Plaintiff's Exhibit 19 in evidence.

MR. BRODSKY: As what?

MISS BALEN: As the list of apartments, Lefrak Apartments that this witness used in his inquiry.

MR. BRODSKY: No objection.

(The list so described previously marked as Plaintiff's Exhibit 19 for identification was marked in evidence)

Q Mr. Burdick, I show you Plaintiff's Exhibit 20 and I ask you if you recognize it? (Indicating)

A Yes. I do.

Q What is it?

A This is the list which I had prepared by my assistants and my secretary as the result of the inquiry made as to the number of cases residing in the building on the previous list.

Q Would you hold on to that, please?

On what date did you make that list?

A I think that was done in November of '72 or early December of '72.

Q I show you Plaintiff's Exhibit 21, marked for identification, and I ask you if you recognize it (indicating)?

A Yes. I do.

Q Could you tell us what it is?

A It is the same list of buildings and it was prepared by my assistants and my secretary in relation to the number of cases residing in those buildings.

Q When was that list prepared?

A May of 1973.

Q Now, on Exhibits 20 and 21, marked for identification, what do the numbers on the right represent?

A The numbers on the right represent the number of cases to which we sent public assistance checks, in those buildings.

Q On Exhibits 20 and 21, marked for identification, what do the addresses on the left represent?

A There are addresses in the middle. Is that the one you're referring to?

Q Yes.

A They appear to refer to the Brooklyn property called the Princeton. For example, in the first one, we were breaking these down by the welfare center that covers this particular area.

We called the welfare center and ascertained from their records as to how many people they had listed receiving checks at that address.

Q Why did you use those particular addresses?

A These were the addresses Levine asked me to clear.

Q Do those addresses that you used, to your knowledge, correspond with the addresses on Plaintiff's Exhibit 20?

A They seem to.

Q On Exhibit 20, what does the total on the last page of 461 represent?

A It represents the number of cases to which we were sending checks in all of the buildings listed on pages one through four of the exhibit.

Q What does the total of 480 at the end of Exhibit 20 represent?

A It represents the total of all of the cases to which we were sending checks in the exhibit, from page one through page four of the exhibit.

Q What do you mean by "cases," to which you were sending checks?

A Cases are public assistance families or individuals who received a check.

Q Did you inquire about the number of apartments that those totals of 461 and 480 represented?

A No.

Q Is such information contained therein?

A No. It is not.

Q Would you explain what you mean by and what a "cooperative" case is?

A A "cooperative case is a case into which two public assistance checks come into the same household and, generally the people are related by some kind of relationship.

Q Is there any way of knowing, from Exhibits 20 and 21, how many of those cases are cooperative?

A No. There is not.

Q Is a coop' case a common occurrence, to your knowledge?

MR. BRODSKY: Objection to the characterization of "common."

THE COURT: You better qualify the witness as to whether he knows about it.

MISS BALEN: He's the Director of the Public Assistance Program in the City of New York.

THE COURT: I don't if he studied that.

Q Do you have any knowledge of the frequency of the coop'? Stay on cases.

A You mean two cases in the same family?

Q Yes.

A It is not a high incidence in the total case line.

Q You have knowledge of that?

A Roughly.

Q What is the source of your knowledge?

A The statistical terms which I review daily, weekly, monthly.

THE COURT: For how many years?

THE WITNESS: Eighteen years.

Q In a coop' case, is the money available for rent fully, for that unit, living in that one apartment?

A No. It is shared by the two parties of the case.

Q Are you able to give us the names of the recipients on Exhibits 20 and 21?

A No. I am not.

Q Are you able to allow us, to let us see the records?

A No. I am not.

Q Why aren't you able to allow us to see them?

A The statutes maintain the confidentiality of public assistance records, except in special circumstances. This is not one of the special circumstances.

MISS BALEN: I now offer Exhibits 20 and 21, marked for identification, in evidence.

THE COURT: I suppose you have the same objection?

MR. BRODSKY: Yes. I have the same objection.

THE COURT: It will be admitted subject to examination. You may have an exception.

MR. BRODSKY: Thank you, your Honor.

(Plaintiff's Exhibits 20 and 21, previously marked for identification, were marked in evidence.)

Q Mr. Burdick, are you familiar with the procedure followed by the Department of Social Services in approving rent payments for welfare recipients?

A Yes. I am.

Q Could you tell us what those procedures are?

A When a family or an individual comes to us, either as a new applicant or as an "under care," a person already receiving assistance, and indicates that he needs assistance in terms of his total needs, we consider the amount of the rental, which he has, which he is now paying or which he is to pay on a new situation in terms of a schedule.

The schedule is divided into three levels, if I recall correctly. The first level is that of a group supervisor.

The second level is that of an assistant official manager; and

The third level is that of a senior assistant official manager. The consideration regarding the amount of rental in terms of the amount or the lodging that the person has found is based on those schedules.

Q What is the time period involved for a recipiant obtaining rent approval in the procedure you described if an individual comes in an office and says, "I would like to move from Apartment A to another apartment" and the rental is within the first level of approval, that is, that the group supervisor's approval determines it?

A Paying that rent is fairly quick. All that's needed there is a clearance with a file located in the office as to whether or not there are vidations against the building.

Assuming the file is clear, the approval for that level will go through quickly. Now, on the second level of approval, it may take a little longer but still within the same relative time frame, an hour or two, depending on how quickly the person who is the supervisor at the first level can gain access to the supervisor at the second level.

Similarly, at the third level, as long as it's in the local office, it takes within a day a decision

is made.

Q If the rental sought to be approved is not within the local office, is there any further procedure for obtaining rent approval?

A Yes. There is. A memorandum is prepared at the local office and is sent to a section of the main office, which is a direct arm of the Commissioner's office.

It asks for an exception to the schedule and asks and gives the reasons, detailing why it's advantageous to the family to move and then the decision is made on the basis of the reasons and the amount of rental that's comparable around the city in connection with what an asking price is for an apartment and at that particular point and so on.

Q Are there any written procedures - I'm sorry - strike that - Is there any limit on the rent that can be approved, other than the limit you mentioned, of the evaluation?

A In the final analysis, there's no limit.

Q Are there any written procedures for approval of rents?

A Yes. There are.

Q I show you Plaintiff's Exhibit 23, marked

for identification and ask you if you recognize it (indicating)?

A Yes. I do.

Q Would you tell us what it is?

A It is the levels approved for rentals based on size of family, number of persons in families for unfurnished and furnished accommodations.

Q Do you know whether it has a citation or not?

A You mean is it called something?

Q Is it called something, yes.

A It's called "Levels of Approval for Shelter Allowance."

Q How did that come to be written down, Mr. Burdick?

A It expires periodically.

Q Who writes it?

A It's the official procedure and policy in my department.

Q Or does it represent the policy or procedure of the Department with respect to rent approval?

A Yes. It does.

MISS BALEN: Thank you. I offer Plaintiff's Exhibit 23, marked for identification,

in evidence.

MR. BRODSKY: I object. Whatever the Department of Social Services' procedure may be, it does not affect or should not affect the decision of any apartment building owner as to whether or not he should accept a tenant in the building. It's irrelevant.

THE COURT: It appears, at this time, it would be part of the same "ball of wax."

(Plaintiff's Exhibit 23, previously marked for identification, was marked in evidence)

Q Now, Mr. Burdick, to your knowledge, does the Department of Social Services give assistance to welfare recipients to obtain housing?

A Sometimes, yes, it does.

Q What is the form of that assistance?

A There are points in time when families come to us indicating they have need for new housing and we have a group of housing assistants located in each of the centers who make inquiry among various brokers in the City as to whether or not they have any apartments available.

They also maintain contact with single

room occupants to find out if single rooms are available and if a family asks for it or an individual, such as this is, he is referred to the place.

Q Are you familiar with the methods of making rent payments for the welfare recipients?

A Yes. I am.

Q What are those methods?

A They pay by one single check in most instances, which includes the budget for food grants and other items of needs, and rent.

Q Is that the only method for making rent payments for welfare recipients?

A There are instances in which families have difficulty in managing their own grants and where there has been a history of recurrence of non-payment of rent in which instance we have made a two-party payment for the rental allowance for the landlord and to the recipient.

Q What do you mean by "two-party" payment?

A We draw a check in the name of the recipient and the landlord for the amount of the rent.

Q Are you familiar with procedures of the Department of Social Services for dealing with the situation where a recipient defaults in making his rent

payments?

A Yes. I am.

Q What are those procedures?

A When we receive notice that a recipient has defaulted in terms of non-payment of rent and where there is a dispossess and a threat of eviction, we can made advance payment to avoid the eviction and we will subsequently re-coup from the client in the non-rental portion of the grant, the amount spread out over a period of time.

Q Is that the only way you have of dealing with the situation where recipients default in making rent payments?

A I'm not sure I know what you mean.

MISS BALEN: All right. I have no further questions.

I would like to say, your Honor, Mr. Burdick has indicated to me that he has an extremely important meeting at two.

I had hoped to be finished before this, with his direct testimony. I'm not sure that cross-examination can be completed.

MR. BRODSKY: I don't think I can finish in 10 minutes.

THE WITNESS: I'll answer faster.

CROSS-EXAMINATION BY MR. BRODSKY:

Q These exhibits, 20 and 21, you say it was prepared in November/72 but as of what date does it represent?

A November.

Q The same time it was prepared?

A Right.

Q And the rent, as I understand it, the number of checks that were sent to each of these particular addresses in November of 1972, were the number of welfare checks; is that correct?

A That's correct.

Q Do you have any information at all as to whether or not any of these people were behind in their rent?

A No. I do not.

Q Or whether any of these people had separate guarantors of their rent?

A No. I do not.

Q Do you have any information about how long these people were living in any of these apartments?

A No. I do not.

Q Do you have any information as to whether

or not or how long these people were living in the apartments after November of '72, for example?

A No.

Q Or before?

A No.

Q So the only thing we know from this, Exhibits 20 and 21, is that in these two months of November/72 and May of '73, the Department of Social Services sent welfare checks to these addresses; is that correct?

A That's correct.

Q You don't know if any of these people were receiving moneys from sources other than welfare; is that correct?

A No. I do not.

Q If I asked you to produce the records of the names of these people, what would your answer have to be?

A I would have to decline on the grounds the statutes prohibit disclosure of information as to public assistance records.

Q You testified before that the procedure by which welfare recipients receive money and the procedure for approving rents for welfare recipients. First, after a particular rent level is approved and a check

goes out to the welfare recipient, is there any indication on the check that a certain portion of it should be spent for rent?

A There is no indication on the check. A client receives a budget advising him of the amount of a flat grant and other specific allowances, if they are included.

Q And the checks, the way I understand it, go out twice a month?

A That's correct.

Q Every two weeks or on the first or 15th of the month?

A On the first and the 16th.

Q And the check includes whatever it is, - strike that - do you know - well, last year, for example - what the flat grants were per person? That is, aside from whatever the rent is?

A They varied by size of family.

Q Yes. I understand that. Well, what would it be for a family of one, for example?

A I don't recall off hand.

Q More or less?

A In the range of $84. a month.

Q Do you know if we can find that under

Section 130-a of the New York Social Welfare Law?

A Yes. You can.

Q And that sets forth precise amounts that people, who are on welfare, receive aside from any rental allowance; is that correct?

A That's correct.

Q Was it the policy of the State of New York, as of last year, for example, to make these flat grants at 90% of what a minimum living standard would be?

A No. They were paid at a 90% estimated public assistance standard of some categories of assistance.

Q Well, 100% would be at a level of what? What does that 100% mean?

A That the public assistance standard is set by the State Legislature. It's not related to the moderate cost budget or any other standard or any other measured standard of need. For example, the Bureau of Labor Standards or anything like that.

Q So, the State Legislature sets 100% standards of what a welfare standard would be, aside from rents?

A Of what they feel a welfare family would need.

Q Aside from rent?

A Aside from rent.

Q And the amount and that's a hundred percent would be what the State Legislature's policy would be of what they think a welfare family would need in this regard?

A That's correct.

Q And what New York State has been doing has been to actually give the welfare recipient 90%, not 100% of that amount; is that correct?

A As of the categories of assistance levels, I'd say aid to dependent children with unemployed fathers.

Q That takes up the vast majority of people who are on welfare?

A Yes.

Q Do you know, by percentage, how much that takes up?

A Probably three-fifths.

Q Isn't the aid to dependent children the largest single category of welfare recipients?

A Yes. It is.

Q Now, when a welfare recipient receives his check every two weeks, the Department of Social

Services doesn't attempt to monitor them in any way as the welfare recipient as to how he is spending his money; is that correct?

A That's correct.

Q And that's by policy of the federal law; isn't it?

A Federal law?

Q That you shouldn't attempt to monitor the way a person spends his money, who is on welfare; is that correct?

A That is correct.

Q And you made no attempt to do that?

A We made no attempt to do that.

Q And so when you sent a check out there is included in the letter what you calculated as to a certain amount of money for rent and other things and you don't make an effort to check weekly or monthly or on any basis as to what a person is doing with his money?

A No. We do not.

Q Now, you did talk about "two-party checks." First, is it a policy of the Department of Social Services not to give "two-party checks" where other arrangements are possible and, as a matter of fact, if the State of

New York gives, by percentage, more than 10% of welfare payments to welfare recipients, two-party checks, it could lose its federal benefits; is that correct?

A That is correct.

Q I take it what you tried to do is keep the two-party checks to a minimum?

A Yes.

Q Now, the only times assistance, as I understand it, when you do give two-party checks, is when you learn that a person, who is on welfare, is actually in default on his rent; is that correct?

A Generally, that is true, yes.

Q So a person is in default, take the welfare recipient, for a month, if the welfare recipient is in default for his or her rent and doesn't advise you, you would continue to make the payments to the welfare recipient in a one-party check, if you are not advised to the contrary?

A That is correct.

Q And if the landlord advised you the person is in default, then what do you do?

A We would check with the family to ascertain if they have rent receipts to ascertain their rent payments and in the absence of rent receipts, we

might remove them from the budget.

Q With notice to the welfare recipient?

A With notice to the welfare recipient.

Q You would remove them from the budget?

A Remove them from the payment.

Q You mean remove them from the payment of two-party checks?

A I don't know what you mean.

I'm saying if the landlord comes to us and says the lady is not paying her rent and there is no dispossess, no eviction, we would clear with the recipient in order to determine whether or not she is paying rent, making payments.

If she is not making payments, we would give her proper notice in accordance with the federal statutes that we're required to do

Q For how long is that notice?

A That notice is for 15 days.

Q And you had occasion if she has not paid the rent?

A That's correct.

Q And another 15 days passes before act action is taken on your part, there's a notice period?

A A notice period, that's right.

Q Continue.

A After which we would move to remove the total assistance payments since she is not making rent payments and it no longer becomes an item of need.

Q Are you saying, at that point, she doesn't get any rent payment in any form whatsoever?

A That's correct.

Q So, then, all she is getting under those circumstances, are specified amounts, under 130-a of the New York Social Social Law?

A That is correct.

Q And she is in default in her rent on this point?

THE COURT: You have already covered it.

Q Under what circumstances would you issue a two-party check?

A When the landlord uses an eviction notice or he asks us to make a two-party check out because of non-payment and we have the confirmation of the person not paying her rent to the landlord and she has trouble managing, we can then authorize a two-party payment.

MR. BRODSKY: May I have this marked for identification (indicating)?

MISS BALEN: Can I see it?

MR. BRODSKY: Of course.

(Mr. Brodsky handed a paper to Miss Balen)

THE COURT: Mark it.

(Various documents clipped together were marked as Defendant's Exhibit B for identification)

Q Mr. Burdick, can you identify this document that I am showing you?

A It's an internal memorandum of the Department of Special Services, Bureau of Public Assistance, dated September 23, 1971, Memorandum 305/71, Subject: Rent Advancement to Forestall Eviction.

Q Under detailed instructions number one, it says, if I'm correct, "When a client has received a dispossess or eviction notice for non-payment of rent and does not have available funds," under those circumstances then you can issue a two-party check.

Is that, in substance, what it means?

A That's the authority to make an advance payment in order to forestall the eviction. The two-party check follows that as a means of forestalling the eviction.

Q The two-party check, when it's issued, is

sent to the tenants rather than the landlord; is that correct?

A That's correct.

Q And in your possession, has it come to your attention that there has been a black mark on these two-party checks? Do you know what I mean by that?

A No.

Q When a two-party check is sent to a tenant, the tenant might attempt to use it, not by getting the landlord to use it by having it endorsed, but in another and cash it?

A I've heard of instances of this occurring. I do not know what the frequency is.

Q But in any event, the check goes directly to the tenant and the tenant, of course, would have to take the check to the landlord and endorse it and give the check to the landlord?

A That is correct.

Q Assume that a welfare recipient has signed a lease in a particular building and the welfare recipient decide to move before the lease term is up and the welfare recipient comes to the Department of Social Services and says she wants to move, does the Department of Social Services do anything about the fact

there is a lease in existence?

A No.

Q In other words, if a tenant wants to break the lease for any reason, the Department of Social Services will, in no way, penalize the tenant or tell the tenant, "Look, you're breaking the lease - you shouldn't do that - stay where you are until the lease is up;" is that correct?

A That is correct.

Q What you would do is treat that person as any other person who is looking for an apartment and follow the same procedure as if there were no leases in existence; is that correct?

A That is correct.

Q In some instances, where you have made advance payment of the rent, by you - I mean the Department of Social Services - you then, after the advance payment is made, you attempt to re-coup that, as you said, from the tenant, from the welfare recipient?

A That is correct.

Q In doing that, do you deduct from the allowance each two weeks a certain amount of money?

A That is correct.

Q Over what period of time do you do that?

Is there any ruling about that?

A No rule.

Q Who decides that?

A The rule that we use is that we will not deduct more than one signature of the total allowance remaining after the reference and then we can extend that for any period of time, depending on the amount of re-couping to be taken.

Q Of course, I take it-this is just arithmetic-in that event a person who is getting 90% of 100% of what a relief recipient should receive, would be receiving a lesser amount, depending on how long a time it takes to re-coup the money; is that correct?

A That is correct.

MR. BRODSKY: No further questions, your Honor.

THE COURT: Very well. Do you have any further questions, Miss Balen?

MISS BALEN: Yes. Very few.

REDIRECT EXAMINATION BY MISS BALEN:

Q Mr. Burdick, if, for example, an ADC recipient were employed while receiving public assistance, what would be the effect or impact of his employment on his grant level?

A The actual grant would be decreased. The total amount of money coming into the household would be increased by approximately $30. a month and one-third of the remainder of their income.

Q Do you know what I mean by "income disregard"?

A Yes.

Q Would you please define an "income disregard" for me, as you understand it?

A The statutes provide that some income in public assistance households shall be disregarded in order for persons to receive incentives towards employment.

Q Is that what you were referring to when you were talking about the thirty-three and a third?

A Yes. That is the "income disregard."

Q The Department of Social Services is required to insure that recipient of shelter?

A Yes. It is.

Q Does that compliance with that requirement normally take the form of rent payments?

A Yes. It does.

Q In your prior testimony in which you discussed the 15-day notice, would you say that in such a

case you would not pay the recipient rent to prevent eviction? Were you saying that?

A No. I was not.

Q And would you wait 15 days to pay the rent to prevent eviction?

A No. I referred only to the 15 days as a time of notification for removal of rent - (interruption)

THE COURT: Just so it's quite clear, is this prior to any eviction being filed?

MISS BALEN: I'm sorry?

THE COURT: I said the testimony was quite clear that the witness only referred to those cases where an eviction notice was filed.

MISS BALEN: Yes. Thank you.

Q Do you know what percentage of the current case level is currently receiving now what I'm referring to as two-party checks?

A It's slightly over 10%.

Q Are you stopping or are you no longer issuing two-party checks?

A No. We are continuing to issue two-party checks.

MISS BALEN: Thank you very much.

MR. BRODSKY: I just have one question, if

may, your Honor.

RECROSS-EXAMINATION BY MR. BRODSKY:

Q Mr. Burdick, do you understand that starting soon there's going to be a drastic change in the law and the procedure?

A In regard to what, sir?

Q In regard to what? Rent to welfare recipients.

A I've heard there is some proposed administrative regulation affecting the rental payments and shelter allowance, yes.

Q Do you understand the system is going to be changed from the one which you now have to a flat grant system?

A I do not understand it will be changed. I understand there are proposals that it should be changed.

MR. BRODSKY: Thank you.

THE COURT: Very well. Can Mr. Burdick be excused?

MISS BALEN: Yes.

THE COURT: You are excused.

(The witness was excused)

We will be in recess.

(Whereupon, the court was in recess)

MISS BALEN: Plaintiff calls Robert Greenblatt as its next witness.

ROBERT GREENBLATT, after having been first duly sworn, testified as follows:

THE COURT: Give your name to the stenographer for the record.

THE WITNESS: Robert Greenblatt.

DIRECT EXAMINATION BY MISS BALEN:

Q Would you state your address, please?

A 446 Rugby Road in Brooklyn.

Q Are you presently employed, Mr. Greenblatt?

A Yes.

Q In what capacity?

A I'm Director of the Legislative Unit in the office of the Legal Office, Human Resources Administration of the City of New York.

Q How long have you had that position?

A Since September 1, 1972.

Q Were you employed before you held that position?

A Yes.

Q In what capacity?

A My title was Special Assistant to the

General Counsel. The work I did was as a Legislative Analyst.

Q Is the Department of Social Services part of the Human Resources Administration?

A Yes.

During the period of time that I was Assistant to the General Counsel, it was the General Counsel of the Department of Social Services, at that time, before they were merged.

Q What were your duties and responsibilities in your position as Legislative Aid, was that?

A My former position?

Q Your present job.

A As Director of the Legislative Unit?

Q Yes. Sorry.

A I supervise a unit of attorneys and social workers whose primary responsibility is to monitor the status of all federal and state legislation that in any way would impact on any agency in the Human Resources Administration.

We analyze hundreds or thousands a year and report on them. In addition, in conjunction with the Mayor's office, I am the legislative representative for the Human Resources Administration with the

State Legislature in Albany.

Q In your prior position as Assistant to the General Counsel, what were your duties and responsibilities?

A At that time, I was essentially responsible for analyzing and reporting on State bills that affected the Department of Social Services as well as getting together the Department's in federal and State legislative programs, including writing them in support and in some cases by letter, drafting things like that.

Q How long had you had that position?

A I started there on June 1, 1970.

Q What is your educational background, Mr. Greenblatt?

A I have a batchelor's degree in political science, Syracuse University. I went to Brooklyn Law School for two and a half years at night while I was a case worker in the Department and I have a master's degree in social policy and planning from Columbia University and I've completed slightly more than half my course credits at NYU for a doctorate in Urban Studies.

Q Do you have any knowledge or have you any knowledge, in the course of your work, about statutes enacted by the State Legislature that authorizes the

Commissioner of the Department of Social Services to guarantee rent for public assistance recipients under certain circumstances?

A Yes. I have knowledge.

Q Do you happen to know what the citation of that statute is?

A I have it written down. It's Section 604 RE 4.0, Administrative Code.

Q What, if anything, do you have to do with that statute? That is, in the course of your work.

A I thought up the idea and am partially responsible for the drafting of the bill and, in fact, wrote the memorandum in support.

Q To your knowledge, is that statute currently being implemented?

A It is not.

Q To your knowledge, are there any plans for its implementation?

A To my knowledge, no.

Q At the time of the statute's enactment or after its enactment, did your Agency, to your knowledge, have any plans for how the statute was to be used?

A Yes. At the time of its passage and immediately afterwards, as may have been said, there

were a substantial number of welfare recipients families in hotels at that time and this was one of the measures we hoped we could use by which we could relocate families from hotels into better housing.

Q To your knowledge, would the statute, as enacted, have enabled the Commissioner of Social Services to co-sign leases for public welfare recipients?

A To my knowledge, it would not have permitted its guaranteeing of rents and we're not going to be a party to the lease.

MISS BALEN: Thank you. I have no further questions of this witness at this time.

MR. BRODSKY: Well, then, I have.

CROSS-EXAMINATION BY MR. BRODSKY:

Q The statute hasn't been implemented because it hasn't been funded; is that correct?

A That's correct.

Q And I take it, when it was passed, you had every hope that it would be funded?

A Well, yes. It was more than a hope involved in order to get it funded. The Agency would request the Board of Estimate for a special amount of money in our expense budget in order to guarantee their funds.

Q Was that begun?

A To my knowledge, it was not done at the time of the passage.

Q An outsider, not a person as closely connected to the statutes, as yourself, but an outsider reading the statutes would have an expectation that it would be implemented, would he not?

A I would assume so.

Q And what the statute envisioned would be that you would guarantee payments of rent?

A If a landlord would hold or rent an apartment, agree to hold or rent a vacant apartment and rent it to a recipient of public assistance, then we would guarantee the rent.

Q You would guarantee the rent payment?

A Yes.

Q Apparently, your job, as you testified, is fairly broad, as far as watching the federal legislation but are you aware of federal legislation that may soon substantially change the present system of providing rents to welfare recipients or rent allowances to welfare recipients?

A I don't know. It depends on what you mean. If you can be more specific? Family categories? The

elderly or what?

Q No. A.D.C., Aid to Dependent Children.

A To my knowledge, no such bill is being given consideration nor is there any likelihood of passage.

MR. BRODSKY: No further questions.

MISS BALEN: No redirect, your Honor.

THE COURT: You may be excused.

(The witness was excused)

MISS BALEN: Plaintiff, Dorothy Boyd, will be the next witness.

DOROTHY BOYD, after having been first duly sworn, testified as follows:

THE COURT: State your name and address for the record.

THE WITNESS: Dorothy Boyd, 418 Beach 37th Street in Far Rockaway.

DIRECT EXAMINATION BY MISS BALEN:

Q What is your address, Miss Boyd?

A 418 Beach 37th Street, Far Rockaway, New York.

Q Do you have any children?

A Yes.

Q How many?

A Five.

Q What are their ages?

A 18, 16, 13, 11 and 4.

Q What is your source of income?

A I receive public assistance.

Q How long have you lived in Far Rockaway?

A About a little over two years.

Q Where did you live before moving to Far Rockaway?

A At 51 Clark Street, in the St. George Hotel.

Q Where in New York City is that, please?

A It's in this section.

Q Brooklyn?

A Yes.

Q How long did you live at the St. George Hotel?

A A little over a year.

Q Were your children living with you at the St. George?

A Yes.

Q Please describe the accommodations you had at the St. George Hotel.

MR. BRODSKY: I object to this, your Honor.

THE COURT: What is the purpose of this?

MISS BALEN: Among other things, it shows why she ultimately looked for an apartment but despite that, we have in our claim for damages, as an element in the cause of action between the refusal of the Lefrak Organization to rent to Miss Boyd and her continuation in the hotel in truly deplorable conditions.

THE COURT: Well, you may proceed. We will see how it comes out.

Q Would you describe the accommodations you had at the St. George Hotel?

A It consisted of two bedrooms, a bathroom, a kitchen and we had to set up cots in order to have enough beds to sleep in because the people came with three beds so, therefore, I had about four cots.

I had no cooking facilities, no way to cook, no kitchen. We weren't allowed to have hot plates or anything in the room.

We set up the cots in order to get in through the bedroom, in the door or out of the door. We

had to crawl all over the coach, actually on our knees, crawling over the cots, like, to get into them or to get to the bathroom.

The whole place was very small and very uncomfortable. If we wanted something cold to drink, we had to go downstairs to the restaurant to have it.

We weren't allowed to bring any food into the room, the place itself being too small to accommodate a family of six.

It was just totally miserable. It was so unbearable. Every day, I went out looking for an apartment.

Q Have you completed your description of the rooms?

A Yes.

Q Thank you. What was the rent you were paying at the St. George Hotel?

A I was paying $33. and I think, -.65 a week.

Q Did there come a time when you decided to move from the St. George Hotel?

A Yes.

Q When did you make that decision?

A Immediately. As soon as I was in there

I made the decision to look for other accommodations.

Q Did you look for other accommodations?

A Yes.

Q What did you do in order to find other accommodations?

A I went around. If there was one real estate man left in the City of New York or Booklyn that I didn't go to, the people would tell me and if they had an apartment there.

Q How often did you look for apartments?

A Every day. Every single day, every single solitary day.

Q Did you ever refuse an apartment that was offered to you?

A Yes.

Q Under what circumstances?

A Because the conditions was worse or just as bad as the one I was already into.

Q And how often did that happen?

A Quite often.

Q Were you ever refused an apartment?

A Yes.

Q Under what circumstances?

A That I was a welfare recipient or that I

had too many children.

Q Where were the apartments located that you were refused, if you remember?

A In this section of the Flatbush areas, the Kings Highway areas, in all the better neighborhoods I was rejected an apartment.

Q By this area, do you mean Brooklyn Heights?

A Brooklyn Heights, yes.

Q Where were you looking for apartments, except in the areas that you mentioned?

A All over Bedford-Stuyvesant. I didn't care what section it was in as long as the apartment was liveable.

Q Was there a time when you learned there were vacancies in Lefrak Apartments?

A Yes.

Q When did you learn this?

A One day - (interruption)

Q When? Could you just give us the time?

A It was in July.

Q Of what year?

A '71, I think it was.

Q Now how did you learn there were vacancies in Lefrak Apartments?

A Through Miss Balen.

Q What did Miss Balen do, as far as you remember, to inform you about the vacancies?

A She gave me a list of different apartments, different real estate people that had apartments to rent.

Q Miss Boyd, I show you part of Plaintiff's Exhibit 6, consisting of two lists and I ask you if you recognize them (indicating).

Would you look at them, please?

A Yes.

Q Would you tell us: Have you ever seen them before?

A Yes.

Q Under what circumstances have you seen them?

A I seen them. This is the list that she gave me about the apartments were listed, different real estates.

MISS BALEN: I'd like to identify these for the record, if I may, since they are part of the larger exhibit.

THE COURT: Very well.

MISS BALEN: These are two lists, one

headed "Lefrak Listings" and the other headed at the top "Queens Vacancies."

The first listing on the list entitled "Lefrak Listings," is Beverly Hills, 2626 Homecrest Avenue and on the far right, "availability 8/1/71."

On the list headed "Queens Vacancies," the first listing is Monte Carlo and on the far right "immediately."

Neither of these lists is dated.

THE COURT: Do you want them marked?

MISS BALEN: They have been admitted. They have been introduced.

Q After you received the lists from Miss Balen, did you take any steps to rent a Lefrak Apartment?

A Yes. I did.

Q What did you do?

A I went into the real estate office, the one that's closest to me.

Q Do you remember which one it was?

A It was on Nostrand Avenue and it's Life Realty or something like that.

Q Do you remember when you went to Life

Realty?

A It was in the month of July. I don't remember the exact date but it was around the beginning of the month and July.

Q When you went to Life Realty, did you speak with anyone there?

A Yes.

Q Who did you speak to?

A With a man.

Q Do you know his name?

A It was Mr. Coochy (phonetic spelling) or something like that.

Q How do you know that was his name?

A He introduced himself to me. He told me his name and upon telling me his name, he gave me a card with his name on it. Also, because on the back of the card he had written - (interruption)

Q OK. I show you Plaintiff's Exhibit 8 marked for identification (indicating) and I ask you if you recognize it.

A Yes.

Q What is it, Miss Boyd?

A This is the card that the man from the real estate gave me, Mr. Coochy.

MISS BALEN: I offer this card, Plaintiff's Exhibit 8, marked for identification, in evidence.

(Miss Balen handed the card to Mr. Brodsky)

MR. BRODSKY: No objection.

THE COURT: Admit it.

(A card, previously marked Plaintiff's Exhibit 8 for identification was marked in evidence)

Q Miss Boyd, when you were in Life Realty, did you have a conversation with Mr. Coochy?

A Yes.

Q Do you remember that conversation?

A Some of it. While I was sitting there, when I first got there, he wasn't there. The office was closed and he had a sign saying he'd be right back in five minutes so I waited outside for that and by the time I was waiting another lady came there and he opaned the office and let both of us in so, going up in the office, I said to him, I said, "You have apartments for rent?"

He said, "Yes, we do."

So, he indicated a board, a bulletin

board on the wall and he said those were the apartments that was vacant and whichever one I wanted to see I could see it.

So, while I was looking over the bulletin board, I chose one that was nearest to me for travelling from his office to where I was so I said to him, " I see the apartment I want to see."

He said, "Yes."

So, when he gave me the card, on the back of the card, he wrote the apartment and told me I should go to see the apartment so when he gave me the card, I left his office, and - (interruption)

Q OK. Is that the end of the conversation?

A Yes.

Q Did you, during that conversation, volunteer any information about yourself?

A No.

Q Other than what you told us?

A No.

Q Did Mr. Coochy ask you any questions other than what you told us?

A No.

Q Where were the apartments located?

A It was at Clarkson Avenue.

Q Do you remember the apartment numbers?

A I really don't but I know I had to take the elevator up to one.

Q Will you look at the back of the card, Plaintiff's Exhibit 8, and tell me if that refreshes your recollection?

A Yes.

Q Will you tell me the apartment numbers?

A 5-C, 265-D, with gas; apartment 7-L, 235-D, but I only got in to see Apartment 5-C at the time.

Q You had gone to look at Apartment 5-C?

A Right.

Q And what happened when you went to look at that apartment?

A I got into the building and I went to that apartment, to this lady. I presumed she was the superintendent or acting superintendent of the building.

She took me up to the apartment and there were people still living in the apartment, you know, but they were packing to move away because the lady and I had a conversation.

She said I would be very comfortable in the apartment and was showing me around and telling

That is on economic stratification and the population group from which the white recipients are being drawn. That would be a way of seeing which one applies.

Q And using all of that, you say this is a form of discrimination against blacks?

A Well, I suppose that becomes a part of a definition of what you mean by discrimination.

I certainly would call it a socio-economic discrimination in that it restricts Lefrak Apartments to a very small top segment of the black and Puerto Rican population while it accepts the much larger segment of the white population.

Q And you can say that without knowing the composition of the group that applied for these apartments?

A Yes, because, well, let's see - if the people - let's see - how shall we put this - the factual situation, as you put it, is the black and whites are being accepted in equal numbers?

Q Yes.

A The whites are being drawn from a population group, which you called to my attention as a much larger population and the blacks being drawn from a smaller population group so from that, in that sense alone, the

630 black families and 632 other families that have become tenants, the ratio of all black families in New York City who have become Lefrak tenants over the last few years is a larger ratio.

Q That's hardly discrimination, is it?

A No, but it is not inconsistent with it.

Q That's still discrimination even though more blacks get into the buildings than whites and even though whites comprise a substantially larger proportion of the population and you come to the conclusion it's discrimination?

A Not on the face of it.

Q It's evidence of the opposite, is it not?

A No. It's not evidence of the opposite on the face of it, itself. It still could be consistent with discrimination. In fact, the gist of my testimony is since the 90% rule inherently is discriminatory, it has to be. That's what it's for.

We're not dealing with populations of minority groups that are equal, economically, that the thing has to be inherently discriminatory.

The fact is that these are small numbers, 630, 632 out of hundreds of thousands of rented households. These are very small numbers and they don't necessarily

tell us any more than quite well-to-do black families are being brought into Lefrak houses.

Q But those well-to-do black families are not any more well-to-do than the well-to-do white families. Is that correct?

A I would say in the deeper sense, it is not.

Q Let's think of it in the shallow sense first.

A I'm sure you can appreciate the difference.

Q I'm not so sure. Why not?

A I, perhaps, shouldn't have referred to one as deep and the other as shallow but it's a question of which sense is the most relevant, I suppose.

Q Don't you be the judge of that. Just answer my questions. Don't judge what's relevant. I'm asking you whether or not these whites, who are getting into these buildings and these blacks getting into these buildings, are basically the people who have the same apartments and the same number of people they are living with are basically on the same economic level.

A Are you talking about the same economic levels?

Q I'm talking about all these people in this

period of time, 1,292 people.

A Sure. If we're looking at these based on the family size and the fact that minority sized groups are larger, on an average, than whites, if these are representative in that one respect of family size, then it's predictable that the income levels of these black people have to be slightly higher than the income of the white people.

Q Are you saying that in order to be non-discriminatory a landlord should have a lower rent standard for blacks than he has for whites?

A No.

Q Is there any other way, under the way you've been testifying, that there could be non-discrimination?

A There certainly is a way where there can be less.

Q Let's talk about "non," OK?

A There, again, we need to know in what sense you mean discrimination.

Q Discrimination in the sense that a black person is being treated differently because he is a black person, not for any other reason.

A The population groups, the blacks on the one hand and the whites on the other are, in fact, differ-

ent, economically. Then, a person is a black man. If he is a representative black man, he is treated differently.

Q I'm trying to get beyond that. Let's take the next step. Are you, therefore, saying that the only way to avoid the kind of discrimination that you are talking about is to have a different and less severe economic standard for blacks than for whites?

A No and I'll explain exactly what I mean, if you want me to.

Q Go ahead.

A The way to avoid that sort of discrimination resulting from this sort of administrative rule, this 90% rule, inherently discriminatory rule, is to simply eliminate all eligibility criteria, eligibility rules.

Q So, even if a person has no income -

A No. Commercially rented households and other landlords do not use this kind of criteria. They rely on the market itself, which determines eligibility.

In other words, very poor people are priced out of the market. Its market price serves that function and it's true quite generally as a discriminatory function but it's not what we call discrimination.

Q You agree that it might economic discrimination?

A Yes.

Q Under your theory, isatt the only way to avoid the kind of discrimination that you are talking about is, in a sense, to equalize this by having a lower economic standard for blacks and a higher economic standard for whites?

A No.

Q How else can you do it?

A The way you could do it is to eliminate the grant.

Q So you take them on a first come, first served basis?

No matter how much they make, no matter what their history was before?

A On the basis of individual judgment.

Q Whose judgment?

A Each individual who comes to rent a house.

Q So now I understand your theory, I think, which is this - (interruption)

A I'm sorry. I object to the term "theory."

Q You mean it's a fact? Is that the difference?

A I would say it's a fact. It's a logical inference, if you will, as to the kind of socio-economic discrimination that the 90% rule or other stringent rules have, that sort, the kind of socio-economic discrimination that those rules inherently impose which could be entirely removed by removing the rule, by not having the rule.

Q I understand that but you don't have to repeat that. I understood that. So, you would eliminate it; in order to avoid discrimination, you would elimate all economic standards, would you not?

A If it were a practical question and a pragmatic question and striking a balance I would judge that is not the thing to do but if it is a hypothetical thing to do, is it possible to eliminate that kind of discrimination, then the answer is yes, it is possible. You're eliminating a rule that is inherently discriminating.

Q You would eliminate any economic requirement? Is that correct?

A In order to eliminate that kind of discriminatinn, of course.

Q That is what I am talking about and you would eliminate from that any requirement as to occupancy in the apartment so that, for example, if a person with

10 children wanted to move into a studio apartment consisting of one room, you would say you would have to eliminate that to avoid discrimination; is that correct?

A Not necessarily. The public policy - (interruption)

Q Forget "public policy".

A If one were to eliminate this 90% rule, they wouldn't restrict the requirement for an apartment. That's non sequitor.

Q Didn't you testify before that it's an occupancy requirement because the poorer sections could not afford it?

A No. I hope I didn't say anything like that; just in income, as such.

Q You want to correct it to "income"? I'm in occupancy now. You've eliminated the income requirements. That's behind us.

We don't have any income requirements because we're trying to avoid discrimination.

A On public health questions, on questions of occupancy?

Q Would you also eliminate the occupancy requirements?

A I would answer that by saying and I want

to reiterate by saying I'm not entering my personal judgment if one, as a public policy, were trying to eliminate discrimination.

Q I'll accept that.

A The discrimination exercise, by the 90% rule, would exist even if we were to take into consideration family size, when we combine it with family size.

Q Can we stay with one thing at a time?

A I'm trying to give an adequate answer.

Q I'm sorry. Go ahead.

A I'm working up to an answer of precisely as to family size.

The inter action of the 90% rule and the occupancy standards, which is a matter of size and health and decency requirements, the inter action of those two produces a more stringent restriction and a greater discriminatory of facts than either one of them would by itself.

The 90% rule, as such, does not justify any eliminating of the occupancy standards, which essentially is a health standard.

The occupancy standard, as such, one could say, had a racially discriminatory effect on the grounds that the minority groups tend to have larger families

and that, alone, would be restrictive to a greater proportion than for whites. Clearly, that would be so but it clearly would not be an important thing but would be certainly in the public health's interest.

Q I'm asking for your own judgment as to which would be better for society. I'm asking for discriminatory effects and how to eliminate them.

A Which discriminatory effects? You defined it several times.

Q I did. We got beyond the economic and we said in order to equalize everyone, we would eliminate any economic requirement and everybody would be equal in that respect.

A I wouldn't say they were equal. I would say they would approach the housing market on the same footing.

Q That's what I meant.

A OK.

Q So, in order to approach the housing market on an equal footage the way you put it, the way to do it would be to eliminate all economic requirements.

Let's put that aside. We've done that. OK?

A Sure.

Q Now, we've got occupancy requirements. OK? I'm not asking for your judgment now. You say that the occupancy standards are discriminatory because black families have more children than white families, don't you?

A I don't know that I would want to use the term "discriminatory" to apply to that differential. I don't believe I did.

Q Why would you not use it there and not use it in the economic sense?

A I'm not using it in the strict economic sense. If we look at family size, it deals with family size on the one hand or if we look at someone coming to the housing market and searching his way in the market, in the absence of an administrative restriction on top of what the market already is, we're talking about hypothetical individuals on the same income level, if you're talking about blacks and whites, as a whole.

Clearly, they are not on the same economic footing, not on the same income levels, but in terms of coming to the housing market without any additional discrimination that grow out of administrative rules, then in that sense they are on an equal footing.

They fact the market as equals in that sense, even if they are not necessarily equals.

Q Maybe it's gone over my head but the simple question is this: Do occupancy standards, in your judgment, have discriminatory effects against blacks and Puerto Ricans?

A Not in the same sense.

Q All right. Isn't it true and didn't you testify that blacks have larger families and since they did, it's more difficult for them to get certain apartments because of occupancy standards and isn't that a form of discrimination that you've been testifying about?

A I'd prefer to call that effect, in order to distinguish it from this other point of discrimination, and I'd prefer to call it a "differential impact."

Q Can't we call it economic discrimination too?

A There are three, rather than two. That's not an economic kind but a non-economic kind. There are three kinds, two which were in the economic region and one which was not. If you want to call them all forms of discrimination you can. I prefer to call it "differential impact," which has simply to do with family size.

Q The results of differential impact is that blacksare excluded from more apartments than whites?

A Yes.

Q Isn't that a form of discrimination?

A Yes.

If you want that considered as such, yes, but it's not the same as the two forms in the economic field. It's quite comparable to the basic underlying form and this is never called discrimination in our terminology but it is a differential impact in our market if a black man and a white man have different incomes and clearly they are not going to be able to purchase the same amount of goods.

Q Or apples?

A Or apples. If you want to call that discrimination, coming to the market with different incomes, fine.

Q Do you?

A No. As an economist, I don't. It's not ordinarily called discrimination. However, on top of that, discrimination, which exists in a free market, which is rather comparable to a family size, on top of that, an eligibility device, which is an administrative control, imposed on top, simply the market control of price, exer-

cises discrimination in a different sense. It's economic but it's in an additional sense and as far as the useage that I'm familiar with in this area, that's properly what properly should be called discriminatory, at least if you want to refer to all three of these forms, differential impact and economic, as discrimination, fine but one should distinguish that as types that grow out of this rule.

Q I know two you're talking about, economic and occupancy and what is the third?

A I'm saying the 90% rule, in and of itself, even if there were not an occupancy standard, it would involve both kinds.

It would involve a discrimination on top of a free market that might exist between population groups and both of those are economic but one of those is the market differentiating effect and I put that in there on any judgment as to what they want to do.

It's a different rule that imposes discrimination in effect.

Q You mean the occupancy?

A No. The 90% rule, in the absence of occupancy. If we want to look at occupancy, the 90% rule

with its strictly economic factor and the occupancy standard, the combined effect of those two is a higher degree of differential effect than either one of them by themselves would have.

Q In order to eliminate them, we would eliminate any economic requirement that would take it out of that component?

A That would take that out of that component.

Q And if we took out the occupancy requirement?

A No.

Q Why not? I don't understand that.

A If you're positioning the question of how would we go about eliminating all differential effects within society?

Q As to race.

A Yes. That's a very hung question.

Q I want to take it one at a time. I'm asking you because you gave some opinions about what you thought would have a discriminating effect. I'm asking about how we would eliminate it and the only thing we agreed on - I'm sorry - strike that - is that we would eliminate the economic requirement.

Would you do anything else or is that all you would do?

A Are you asking in terms of my judgment?

Q No.

A It's a question of what one means by discrimination. If, by "discrimination" is meant a discriminating effect, this differential effect, this 90% rule, as such, if that's what we mean by "discrimination," that means that particular people in a particular manifestation would be fully eliminated of the 90% rule, knowing about occupancy standards.

On the other hand, if what you mean by "discrimination" includes all these discriminatory effects, some of which grew out of the natural differences of groups and their family societies and others which grew out of the underlying groups, clearly we don't begin to touch those things. If you include all those things among population groups as coming under the heading of what you want to call "discrimination," there's no way of eliminating that outside of making all groups similar in all respects, which, again, is an absurd system.

I'm sorry I can't be more satisfactory than that.

Q It's not a question of being more satisfactory. It's a question of being more responsive.

A I need to know which definition of discrimination you have in mind.

Q I want to know if you made the difference between these kinds of discrimination where you agree the ultimate result is the same, the impact, as you say, of less apartments available to them.

You're talking about two different kinds of discrimination. What are they?

A You referred to the realm of economic discrimination, Within this area of economic differentials it's beyond family size.

Q I thought we were beyond that. You said, at the risk of being repetitious, you said the way to eliminate discrimination is to eliminate economic requirements. Correct?

A The way to eliminate that?

Q To eliminate economic discrimination is to eliminate economic requirements. The question is posed much too broadly and it depends on what you mean by "economic discrimination."

Q The way to eliminate it, which you have been talking about because of the figures you have seen

and worked with, the 90% rule, has the result of, say, making available more Lefrak Apartments to whites than to blacks and the way to eliminate that problem, you say, is to eliminate the 90% rule and have no economic requirements?

A I must protest and correct that. The 90% rule doesn't say anything one way or the other or to say that more apartments are offered to blacks than to whites.

What it does say is the impact of this rule on all the potential people who are affected would fall within that. I could go on.

Q Or to eliminate the impact of the rule you say eliminate the rule?

A That's right and have no economic requrements.

Q Therefore, you would eliminate the rule and eliminate the impact of the rule?

A That's right.

Q Can we just leave that over here for a couple of minutes?

There's still another rule, you said, acted in a discriminatory way and if you didn't, correct me and we'll go on, which is the occupancy standards.

You said, I believe, on direct examination, that the occupancy standards, as you understand them, in the Lefrak Buildings have an effect to have more apartments available to whites than to blacks; is that correct? Did you say it or not?

Let's stay with that question.

A No. I didn't say that because I didn't analyze the operation, occupancy standards as such.

I only analyzed it as it works in combination with the 90% rule.

Q How can you analyze it in combination without analyzing it by itself? Is that possible?

A Oh! Yes. It's quite possible and it has to do with the way you set up the possibilities.

If one wants to answer the question: Does the occupancy rule, as such, have an impact on a racial group? that question would be easy to answer.

Q Do you know?

A No. I haven't addressed myself to that question.

Q OK. We don't know?

A I can give you a general answer, not a precise data analysis, that it would tend to have some degree of differential effect.

The difference in family sizes, as such, leaving aside income and other economic matters, the difference in sizes are not very great.

It's when those family size differences are considered in combination with the income levels and then the discriminatory impart or whatever, the impact of the 90% on people, two racial groups, its different income levels and the different family sizes, then it intensifies the difference caused by the 90% rule.

Q Not because of the 90% rule but the occupancy rule?

A Right.

Q Then you would find there is a differential impact rather than discrimination, as you put it?

A Sure.

Q And the way to eliminate it, I suspect, is to eliminate the occupancy standards?

A Yes. When you're setting out to eliminate that effect one would eliminate the occupancy standards.

As I said before, I wouldn't recommend such a thing.

Q I'm not asking for your recommendation. I'm asking how would one go about to accomplish a

particular result, the resulting elimination, if you will, of what you call this form of discrimination, which would eliminate all economic standards and to eliminate all occupancy standards would not achieve that result - is that correct?

A No. I wouldn't say that. If the question you're posing to me - (interruption)

A I'm not asking for your recommendation.

A I understand. If you're asking me, in order to eliminate totally the degree of the differential impact if the 90% rule, in culmination with the occupancy standards, exerts that result, yes, to eliminate that total impact, their combined effect, one would have to eliminate both parts contributing to the effect.

Q There would be no other way to do it?

A To eliminate that total effect there certainly would be ways to deminish it.

Q I think you said, as part of your direct testimony, that the 25% standard, the usual standard, - is that the phrase applied by landlords?

A I'm not prepared to testify to that one. I know it's in common useage. It's a more common ruling than the 90%. It crops up as a standard so it's a secondary used rule.

Q And 25% means 25% of gross income, rather than net income? It's, in other words, income before you deduct for taxes?

A That's right.

Q And you take a week's salary to a month's rent on that basis; is that correct?

A I'm not sure what you mean. These things are much simpler in terms of a monthly basis.

Q How would you say it?

A A rent income ratio of 25%.

Q That is your understanding of a common standard that landlords apply, is it?

A Well, I know it's used.

Q Didn't you say it on direct testimony?

A I know it's used and I know it's more common than the 90% rule. I don't know how common it is.

Q Do you know of any landlords that used it?

A I don't know of any specific one.

Q Could you name one?

A No. I don't think I could.

Q But you do know the 25% rule is used in certain federal housing subsidy programs; is that correct?

A Yes.

Q And the Federal Government, itself, under these programs, will not permit the person to go into an apartment if his rent exceeds the 25% rule; is that correct?

A Well, there's two different kinds of programs in which it is used. One has to do with public housing, which you're referring to.

Q Let's stay with that.

A The other you referred to is the various subsidy programs and in that case, the 25% rule is used as a maximum rather than a minimum.

In other words, the person must pay at least 25%.

Q Take the federal program. It's a minimum in the sense that if he makes less than that, he is ineligible? Is that correct?

A I believe so.

Q And using that standard, that would have an effect of racial discrimination, would it not?

A Well, let's see if you spell it out a little more fully. It would have in what sense?

Q In the sense you're talking about. More blacks earning less money than whites and, therefore, if

you applied a 25% rule more of the subsidezed apartments would be available to blacks than to whites because the whites made more money?

A To the proportion of people that were eligible. I'm not sure the way the differential impact works. That's why I'm hesitating.

In this new case you raised, I'm not sure it means that a larger proportion of blacks would be eligible for public housing rather than a smaller proportion.

Q You are not sure of that?

A I'd have to think it through.

Q Think it through, please.

A I'm going to have to back up and ask you again to ask your question so that I'm absolutely clear in what context it is and as to which program you're asking.

Q In federal subsidized housing programs - you understand that?

A Yes.

Q There are federal housing, subsidized housing programs.

A You mean the public housing?

Q I will get to the specifics. You are

aware of them?

A Yes.

Q And you are aware of what is known as the Brook Amendment in that there is an income/rent ratio eligibility requirement under federal law?

A For public housing, under 236, yes. The eligibility requirement works the opposite way in those cases.

Q I'm only talking about the Brook Amendment. Now, if you are familiar with it, only that, and nothing else, OK? Are you familiar with it?

A Yes. I am.

Q Then you understand there is a 25% rule in the statutes which is similar to the 25% rule you testified about, that you said was common among landlords?

A Yes. It's similar in the sense that it states - well, it's not so similar - it states no tenant would be required to pay more than 25% of his income.

However, the relationship between that ratio and income is in terms of income criteria for getting into public housing. Isn't that your standard under the Brook Amendment, that if a person doesn't meet the 25% requirement, he is ineligible for that?

A It works that way but that's one of the defects of the amendment because it was never intended, the income level was independent.

Q You're saying everybody in the country is misinterpreting it?

A No. I think what I've said is quite consistent with the way it's understood.

Q Yes, and it's applied in the same way the landlords apply the 25% standard, is it not?

A In terms of the statutory intention of the Brook Amendment, no; it's a different matter; in terms of the practice, the way it is done outside, it's turned out to have that sort of effect.

Q The effect being that the way it's applied? Never mind your interpretation but your interpretation of the way it's applied is in the way it's applied similar to landlords applying the 25% standard; is that correct?

A No. I wouldn't say that.

Q In what way is it different?

A The 25%, under the Brook Amendment, was intended to protect the income of public housing tenants so that they would have sufficient resources to cover their basic necessities and, consequently, it specified

no public housing tenants would be required to pay more than 25% of his income whatever as a tenant in public housing.

However, the income eligibility criteria for being a tenant in public housing is determined quite independently of this.

In fact, the range of income for tenants in public housing was broader so the problem arose with the Brook Amendment about people with low income in low income levels, as to who were eligible for housing.

When they paid 25% of their income, it wasn't sufficient to cover the cost of the housing. What tended to happen and this is generally considered to be an inadvertance effect and a defect and maybe it could have been predictable by the Congress.

It was considered to be a defect. So as not to go down the drain, the public housing the Public Housing had to exclude people with lower incomes who were eligible who were, in fact, eligible under the income criteria but with the Brook Amendment, which had as its only purpose to protect resident's income they would not pay to cover the cost.

What the thing gravitated towards was a situation with people who, by law, should have been

eligible for public housing, were excluded because their income was too low.

I wouldn't say it operated the same as these restrictive criteria of landlords. It had the opposite intent.

Q Let's forget about the intent. Let's talk about the language itself. Under the language of the Brook Amendment it says,"The person's income may not exceed one-fourth of the family's income, as defined by the Secretary of Health," etc.

A I believe the family's grant may not exceed is what it says.

Q I'm sorry. Didn't I say that?

Isn't that what you said is the landlord's requirements? Isn't that precisely the landlord's requirements?

Never mind the intent. Let's talk about the English language.

A One must continue the sentence because as it stands, it's not a complete sentence. The tenant's rent in public housing must not exceed 25% of his income in order that his income for other basic necessities should be protected.

Q Show me where it says that in the Brook

Amendment "in order to protect his other requirements."

A We probably would have to look into the legislative history to see if that was the intent but this was well understood. In other words, it is not an eligibility criterion.

That's the point; the fact that both of them happen to be 25% is trivial. In the one case, it's an eligibility criterion and in the other it's an income protection. They are two different things.

Q As an income protection, it would say the opposite, wouldn't it?

A How do you mean?

Q As an income protection and in order to put these people under this program for housing, it would say it doesn't make any difference what percentage of a man's income he pays for rent.

A No. Quite to the contrary, it says for a low income person he wouldn't have to pay 25%. The eligibility requirements say he can't pay any more than that even if he wants to.

That's the difference.

Q But if he can pay more than that and he didn't make enough to pay the rent, he can get into that building? Isn't that correct?

A It says that the person would not be allowed to pay "more than" even if he is capable and wants to.

Q But if he can't pay that, for that apartment, he can't get into the building. Isn't that true? Isn't that the way it works?

A I'm not sure. You're talking about public housing tenants.

Q I'm talking about the Brook Amendment.

A That's public housing.

Q If his rent is a 30% factor, they will take that person but you're not able to come into this federal subsidized building?

A If they say that, they are lying because he is able to come into the building if his income is within the limits.

In fact, in practice, they may discourage him away because they know his income is so low that the requirements of 25% won't be enough for them to cover their costs.

In effect, what it came to is the people became excluded but not as the result of any rule excluding them on that basis.

Q When the people were excluded, that would

be affected by your standards as you described, of excluding blacks and Puerto Ricans; isn't that true?

A I always like to be careful. More than that, if it happened in public housing, strictly, it's illegal and they have a cause for a complaint with that sort of discrimination, which is de facto but is strictly illegal.

It is almost hidden and obscure so it's very hard to see what the racial impact is there.

Q Do you have any experience in the administration of this statute?

A What statute? The Brook Amendment?

Q Yes.

A Not directly, no. I've studied it and read the reports on it.

Q Have you studied the history of it?

A I can't say I've studied it intensely.

Q What legislative history have you looked at?

A Some of the Congressional Committee's Reports.

Q Did you read the statements by Senator Brook that under the Amendment a person's income, a person's rent shall not exceed 25% of his income?

A Yes.

Q So that, if a person doesn't meet that standard, he can't get into the housing?

A No. That's incorrect.

Q That's incorrect?

A The criterion is determined on a basis different than that.

Q Despite the English language which says "rents shall not exceed one-fourth of a person's income"?

You say that when they do exceed it, they should be allowed into the house.

A Are you asking my judgment?

Q No. What you think the law to be.

A What I understand the law to be? The way it works is people were admitted who came within the income of the eligibility criterion whose rental payments of 25% were not sufficient to cover cost.

THE COURT: What did they do with them? Let them stay?

THE WITNESS: No, because under the more general housing legislation, they were eligible to be there but some housing authorities came on the verge of bankruptcy. Others went into bankruptcy. Others began to be

exploited in the first two years of the Brook Amendment. Again, groping with new ways to deal with it and as far as I know, the general public housing has not been altered to change the income limitation de facto subsequent to the time of the Brook Amendment, which did not specify rental limits.

THE COURT: Is the 25% enforced?

THE WITNESS: No. Even though it's still not generally enforced. Well, now enforced? Is it enforced in the sense of not requiring people, whatever their income level, required to pay more than 25% of their income? Is that in the sense you mean it?

THE COURT: No. If the income is not sufficient?

THE WITNESS: It's still not enforcedin that way, generally. In some places, since it has been interpreted that way.

What is the legal standing of that? I have no knowledge of it. I know in the first year it was not intended in that way. This led to problems which led to further modifications.

I'm not familiar with what all of those might be. My understanding is and in fact, I'm quite sure it's not universally generally enforced in that interpretation.

Q You are saying, despite the clear language of this, your understanding is that whoever administered this law just disregarded it?

A No. I wouldn't say that because all that law is on the Brook Amendment and as such specified that the housing people will not charge more than 25% of their income.

THE COURT: They reduced the rent?

THE WITNESS: They reduced the rent to below costs, your Honor. That's what led to the problem. It was a big problem, a general one and it's not at the present a resolved one.

Q That has become a general problem for the Federal Government just as a low economic standard could become an economic standard for a landlord in exactly the same way, couldn't it?

A Not exactly the same way.

Q It's worse?

A It's more in Lefrak than in public housing.

Q We were talking about a 25% standard and

you were comparing it in your direct testimony to the 90% rule as you understand it?

A Yes.

Q And you were giving various percentages. You said the amount that welfare recipients receive they don't pay taxes on at all, on the money they get from Welfare. You said that?

A Yes, sir.

Q Did you do any calculations? It may be that you did and I missed it. Did you do any calculations on how that 25% standard would compare with the 90% rule as applied to welfare recipients who pay no taxes?

A Yes. I can say something about that, that I didn't previously but I'd like to.

Q Wasn't the number of .2565 what you gave us on direct examination?

A No.

Q What was that?

A That's what the ratio would be if we calculate a grant as net income. The comparable net income ratio in the gross sense, where the 25% rule is always used in the gross sense, would be 20.7 .

In other words, the 90% rule corresponds to a net income ratio of .2565, rent to net income.

In terms of rent to gross income, which is the sphere in which these rent incomes were discussed, the 90% rule corresponds to a 20% increase - if we looked at the 25% rule, - I didn't do this before - in the sense of a gross/income ratio and just deducting federal taxes, withholding, and nothing else.

Q You did that before?

A No. I didn't do that before. This would result in a net income ratio, a 31.25% and that would correspond to a 90% rule, and that would correspond to a 70.9% rule if we used weekly income. A certain percentage of the monthly rent, weekly income would have to be 74% of the monthly rent.

In other words, the 25% rule, as it's usually used on gross income would correspond to a 75% thing compared to the 90%.

THE COURT: They wouldn't have any in here, would they?

MR. BRODSKY: It's for the welfare recipients.

THE COURT: So the 90% would equal .2565?

THE WITNESS: If gross income and net income were identical in all respects, yes, the 90% rule would correspond to .2565 .

Q In this sense, the standard is more liberal for welfare recipients than for somebody who pays taxes?

A Which standard?

Q The 90% rule as applied, taking it as a net income basis.

A It's hard to say because, in practice, the 90% rule, as I understand it, is based on a net income except that excludes a lot of things.

Q You know you testified all day about that.

A I'm sorry. Strike that. I apologize.

Q I don't want to argue with you. Can we stay with one thing at a time because otherwise we can get into all these other areas.

You haven't testified on these on direct examination or cross-examination and I would ask you not to volunteer it now unless you think it's vital to answering the question.

Let's stay now with welfare recipients who pay no taxes. There's no withholding on a federal or state withholding so this money is net money, OK?

A As far as taxes are concerned?

Q As far as taxes are concerned. That's all I'm talking about and on that basis, the rule as applied,

as you understand it, would be .2565, which is identical to the one you testified to on the 25% basis?

A Only if there are no other excluded items.

Q Like what?

A Insurance contributions.

Q Insurance contributions applied by whom?

A This wouldn't apply to welfare.

Q Applied to everybody?

A As far as the 90% rule and applying it to a 25% income ratio and that being greater for welfare recipients.

That would apply if comparable. I'm sorry. I'm not trying to be difficult in trying to raise the qualifications. The qualifications have to be raised.

Q My only comment is you seem to raise the question only when I raise the question but not when the other side does.

THE COURT: Are you going to remain her tonight?

THE WITNESS: I can do so.

THE COURT: I'm trying to arrange it tonight so you can get back to Washington.

THE WITNESS: I would appreciate that but

if it's not possible, I would have to stay.

THE COURT: How much more have you got to go?

MR. BRODSKY: I would say probably at least 30 minutes and for my own convenience I have witnesses to talk to tonight.

THE COURT: We met at 9:30 so I will expect you to be here then.

THE WITNESS: I'll be here.

THE COURT: If there's nothing else this afternoon, we will recess until 9:30 tomorrow.

Do either of you have any questions for me?

MR. BRODSKY: Just one. I just want to know if I should have any witnesses here tomorrow. My witnesses are available and I can have them here at any time.

MISS BALEN: No. You should not.

THE COURT: How many more witnesses do you have?

MISS BALEN: The plaintiff still has to testify. After that, six more witnesses.

THE COURT: Six more?

MISS BALEN: Yes.

THE COURT: Would this be cumulative?

MISS BALEN: No.

THE COURT: I have a policy of when I don't have a jury of saying anything that disturbs me so you have time to meet it and I'm wondering whether or not this study that the doctor made, that covered the whole city the way I understand it, if it would apply, unless you offered testimony to show in the light of his testimony that blacks have less income, whether or not we would have to have testimony with regard to the density of blacks, etc. in this area.

MISS BALEN: My only problem is that the implied information is not in evidence and I submit not proveable and that it is the people in Brooklyn who are the only ones who seek to rent an apartment in Lefrak Apartments in Brooklyn.

THE COURT: It is generally true that rascists congregate in the same place, as a general rule, to a large extent.

MISS BALEN: But in New York that would

not be necessarily acceptable in Staten Island. Staten Island has very few minority people. I think some part of Richmond, which is near Staten Island, and except for these we cannot make it borough by borough wasn't what we did in Brooklyn, and I say the impact of the study, assuming the same ratio would apply in Brooklyn, where I understand your apartments are located, Is that right?

MR. BRODSKY: This study was made in Brooklyn but, as you heard, we do have quite a number of apartments in Queens as well, a few in the Bronx and one in Staten Island.

THE COURT: The 15,000 are scattered?

MR. BRODSKY: Mainly in Queens. We are going to have a list in evidence.

MISS BALEN: Your Honor, I might also say that probably the only fruitful statement that can be made concerning choice of borough location is that all people in the City of New York are considered, all boroughs. I can't even concede it might be different.

THE COURT: I'm not an expert but I'm trying to find out what the evidence will show.

This witness has not adduced it. There are borough to borough migrations?

MISS BALEN: They have more to do with age and to a lesser extent to race. Single young people and single elderly people do live in Manhattan.

THE COURT: Would you say that's the same throughout the city?

MISS BALEN: No. Queens is growing rather quickly but the Brenx is the largest, Bronx and Manhattan.

THE COURT: The tenancy would not be the same?

MR. BRODSKY: Oh! No. I think there are very few blacks living in Staten Island and even in Manhattan, I'm sure your Honor knows, there's the area of homes where there are all blacks and a portion of Manhattan, which will be white, just by observation.

THE COURT: What effect does that have on your study, doctor, assuming that's true?

THE WITNESS: That the racial proportions vary significantly from borough to borough?

THE COURT: Yes.

MR. BRODSKY: And from block to block, east side of Manhattan to the west side of Manhattan.

THE COURT: I was just wondering what impact it had on your studies, if there was differences of that type.

THE WITNESS: I don't really know.

THE COURT: You might think that over tonight and tell us tomorrow, if it does or does not. If you have statistics, which would indicate what the differences are, perhaps you can give us some of these studies you made of these statistics. I don't know.

THE WITNESS: Those kinds of data are available. I don't have them with me.

THE COURT: Well, I just wanted to tell you what I was thinking.

MISS BALEN: May I make a suggestion about putting aside what this witness may inquire about.

This is an official study of the City of New York, which I have not attempted to introduce before. It is done every three years, a housing and vacancy survey required by the

City Council to determine whether rent control should be ended in New York City (indicating).

It answers all your questions.

THE COURT: I can't go through all those pages, though.

MISS BALEN: What I suggest, if there are no objections, is that I take those portions of this study, which might be relevant, into chambers to show them to Mr. Brodsky and Mr. Schwartz.

THE COURT: See what you can do in that area. It might be that might be helpful. You understand my question, don't you?

MISS BALEN: When I listen to a question like that, I think of more of what I know about New York City and that is the problem of neighborhoods, not of borough by borough.

You can go three blocks and have a racial group and in the next three blocks find another racial group and sometimes it's broken down ethnically as well and even on different sides of the street and I can't say one particular borough is black or white.

THE COURT: The only thought I had was assuming his study was New York City, if true,

whether the difference of race over here was greater and if that would have any impact on his study in applying it here.

MISS BALEN: I believe Dr. Bickel testified that he considered all potential trends and rented housing locations in every borough.

THE COURT: Off the record.

(Discussion off the record)

The trial will be continued tomorrow at 9:30 a.m.

(Whereupon, the trial was adjourned at 5:10 p.m. to be continued on December 4, 1974 at 9:30 a.m.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

DOROTHY BOYD, individually, and on behalf of all others similarly situated :

Plaintiff :

INEZ STONEY Index No.

Intervenor-Plaintiff 71-C-1433 :

-against- :

THE LEFRAK ORGANIZATION and LIFE REALTY, INC. :

Defendants :

----------x

225 Cadman Plaza East
Brooklyn, New York
December 4, 1973

The trial was continued on December 4, 1973 at the United States District Court for the Eastern District of New York, beginning at 9:30 a.m.

Before: HONORABLE TOM CLARK
United States District Judge

JOSEPH L. BENEDETTO
Acting as Official Court Reporter

Appearances:

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Of Counsel

THE COURT: Miss Balen, are you ready to proceed?

MISS BALEN: Yes, your Honor. I don't think the testimony of Dr. Bickel had been completed.

THE COURT: Very well. Doctor, will you come around.

GARY WILLIAM BICKEL, having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION BY MR. BRODSKY:

Q Dr. Bickel, I think when we adjourned yesterday we were talking about the fact that welfare recipients paid no taxes. Do you recall that?

A Yes, sir.

Q And because of that fact, the 90% rule, as we've been discussing it, as far as welfare recipients are concerned, would be, by your calculations, comparable to this .2565 that you gave us or approximately 25%; is that correct?

A Yes. No other deductions, in addition to taxes, were taken from any welfare recipient.

Q We're only talking about taxes now.

A In that case, it's not quite correct since there are other deductions that might be taken.

Q By welfare recipients?

A If they were purchasing goods on time.

Q And that would apply to a non-welfare recipient as well?

A That's right.

Q Is there any difference in that regard between a welfare recipient and non-welfare recipients? Does he pay less or more for a house or a car?

A No.

Q But there is a difference. He doesn't pay taxes and most other people pay taxes?

A There are people on fixed incomes and they would be paying a smaller amount of taxes such as

Social Security contributions and so on.

Q And those people come closer to the situation of welfare recipients?

A That's right.

Q As do people who pay less taxes, for example, because they have more children; is that correct?

A That's correct.

Q So that the less taxes that people pay the closer they come to the position of welfare recipients?

A That's right.

Q And, of course, the least money that these people, who are not welfare recipients, earn, the least taxes they pay and the closer they come to the welfare recipient?

A That's true.

Q You testified on your direct examination you came to, I believe, and correct me if my recollection or my notes are wrong, that using the 90% rule and I assume you're excluding the welfare recipient, although you didn't say that and that would come out to about 25.7% of a person's income, assuming he's paying taxes; is that correct?

A That's correct.

Q That has nothing to do with welfare recipients?

A I'm not sure I made quite such a strong statement.

Q You put it your way.

A That would apply to working members of the population.

Q In what way is my statement incorrect?

A Well, in the sense that in moving from gross income to net income to the whole population, it's not possible to take a count of all the deductions that are actually taken out of the gross income before the 90% rule is applied so a compromise has to be struck for taking out those deductions for which we have data.

Those are not all the deductions by any means. Consequently, this figure of 29.7 is in some senses a kind of an average that does apply to the whole population of wage earners where the figures should be actually considerably lower and the population of non-wage earners whether they be retired or welfare recipients, the proportion should be somewhat higher so that figure of 20.7 is disproportionate with a true average for the whole population.

Q Including welfare recipients?

A Including welfare recipients because if applied to wage earners only and if we are to deduct not only the taxes but the other deductions, the figure would be considerably lower.

Q I'm not talking about other figures. Stay with me a minute. The 25% figures, there the only deductions that you made were deductions for taxes; is that correct?

A Yes.

Q In coming to the 20% figure?

A That's right.

Q Can we, at least, for the minute, forget for a minute any other kinds of expenses welfare people and other people have, loans, etc.? I'm not talking about that.

A That's right, since we have deducted a fixed expense for the 90% rule in this figure which doesn't correspond to a kind of rough average of both parts of the population, both for wage earners for which the true figure would be lower than 20.7% and the person on a fixed income and for which the figure would be lower than 20.7% so it does apply to the whole population as an average.

We could see, if we had the data for the

two groups. It would produce a rent/income ratio of less than 20.7 and higher for people on fixed incomes but that figure, I believe, represents a pretty fair average.

Q Let me understand what you did. I thought I understood what you did. I thought you testified on direct testimony, direct examination, the difference between the gross figure and the 20.7 figure, which you calculated, is the result of taking into account the tax deductions?

A That's right.

Q Well, welfare recipients don't pay taxes?

A That's right.

Q And, therefore, it follows, does it not, that the welfare recipients are not influenced in this calculation?

A No.

Q How did you do it? Where did you put it?

A They are included in the whole population of New York City and this figure of 20.7 corresponds to an average figure for the whole population of New York City so, implicitly, the welfare households are included.

Q What did you do? Take less of a percentage of a tax reduction than the ordinary family pays in order to account for welfare recipients that pay no taxes?

A No. As I explained before, sir, I simply omitted all the other forms of deductions and additions of federal taxes.

Q Forget it.

A We can't forget it. They are at issue.

Q But they do apply to everybody?

A They applied to welfare recipients and non-welfare recipients. I'm trying to isolate the distinction of the tax benefit that welfare recipients get. Can we do that?

A Well, I'm not sure what you mean by that.

Q What do you believe I mean by that? Let me back up for a minute.

Can you do a calculation for me comparing a 90% rule and the 25% rule? Can you do it with me now?

A Yes. I'd be happy to try.

Q Go ahead. How do you do it? Show me, in numbers, how you did it.

How did you come from one to the other?

A The 90% rule utilizes weekly net income, weekly take-home pay. This is net income defined in a very stringent manner, excluding taxes, if taxes are paid, excluding all other or at least many other fixed debt obligations.

The 90% rule, based on net income in that stringent sense, is precisely equivalent. This is just a mechanical formula, a matter of getting the number of weeks and months precisely equivalent to a 25.65 rent/income ratio.

If the income that we're now basing that non-income ratio on is equally stringently defined, that is, if it's net income in the stringent sense of excluding taxes and all other deductions that are actually used, that is so.

The Rand Corporation, in their study, used a concept of disposable income, which might approximate this from the degree of exclusions that it actually uses.

Q May I interrupt for a moment?

A Yes.

Q We can get to the Rand study later. What I'm trying to get you to do for me is to say what you did to come to the 25.65.

Can you do it with numbers so we can go through the numbers?

A I've given you the number, 25.65 .

Q That's a conclusion. I'd like to see how you got there.

THE COURT: You deducted taxes, didn't you?

THE WITNESS: No, not at this step, your Honor. This is a mechanical relationship between the 90% rule.

THE COURT: You started with a gross, didn't you?

THE WITNESS: No. This relationship between the 90% rule, which compares weekly income to 90% and then moving into a rent/income ratio, both of which are on a monthly basis.

The only step involved here is knowing the fact that there are four and one-third weeks in a month, on an average, over the whole year, which is obtained simply by dividing.

Q Can you take some numbers? Do it so we can see what you did.

THE COURT: You said 20.7 was the gross. Is that right?

THE WITNESS: Well, sir, that's the result.

THE COURT: That's the ratio of the rent I'm talking about.

THE WITNESS: That's the ratio of the rent to gross income on the assumption that the deductions are moving from gross to net amounts to a little less than 20% of gross income and

if we were to now subdivide this to different types of income of welfare recipients, people on fixed income - (interruption)

THE COURT: You see what we want to get is the net. We're trying to compare that. You tell us 25.65 was the net and 20.7 was the gross. Is that right or not?

THE WITNESS: Those two figures are correct on the assumption that overall, for the whole population, the average amount of exclusions are moving from gross to net amounts to a little less than 20.7 gross income.

THE COURT: That includes taxes and everything?

THE WITNESS: Well, the figure I used from this was federal tax exclusions but recognizing - (interruption)

THE COURT: You really didn't deduct anything but ta es, did you?

THE WITNESS: No.

THE COURT: It would be difficult to deduct anything else, wouldn't it? Because you wouldn't know whether I owe on my refrigerator or my car or my baby?

THE WITNESS: This was the reason, your Honor, I referred to the Rand study, because they were able to use more detailed studies for New York City.

Their average deduction from gross income comes to twenty-nine and some percent; nearly thirty percent is their average figure so I took twenty-five so I was using a very conservative figure, if it were to be applied to wage earners.

I would recognize this, as the attorney emphasizes it, as applied to people's fixed income.

THE COURT: Let me see if I understood you. You first took off 20% and fixed the dollar, the taxes and other charges?

THE WITNESS: No. I worked in the other direction, to tell you the truth.

THE COURT: Tell me how you did it.

THE WITNESS: Since the 90% income, as it's referred to, net income, was just transferred, mechanically, in the ratio of net to income is what I did.

Considering what defines net income and that's the 25.65 ratio, that's sort of hanging in the air unless we know how the net income differs from gross.

That just translates the 90% rule into the more familiar way of discussing these ratios, which is to put them both on a monthly basis.

THE COURT: Would it be fair to say that your 25.65 is just a rough estimate?

THE WITNESS: Of rent to net income?

THE COURT: Yes.

THE WITNESS: Well, it's the precise figure for the way the 90% rule translates into a net income ratio but, in and of itself, that .2565 doesn't tell you anything about how we got from gross to net but it's that figure.

You see, the 90% rule is posed in an inverted trickery manner.

Q Inverted what?

A "Inverted tricky manner."

Q Tricky?

A Tricky. It makes it more obscure than

needs to be because rather than dealing with a straight formula of rent to income, we define income and a straightforward rate of monthly rent to monthly income. However we define ~~income~~ and a straightforward rate of monthly rent to monthly income, however we define income, it turns the thing around.

It inverts it and makes it a ratio instead of rent to income, a ratio of income to rent and it uses two different time periods so it takes weekly income and compares that with monthly rent used so that makes it more obscured, more confused - I'd say "tricky," rather than a straightforward rent to income, which it would be, which is the usual practice.

THE COURT: Suppose you added the monthly income instead of weekly, where would it come out?

THE WITNESS: That's precisely the point. That gives us the .25-ratio,-(interruption)

THE COURT: -65 ratio? I thought you objected to the weekly?

THE WITNESS: Well, it's a lot more straightforward and simpler to work with and, of course, conforms to the general practice and rules for government data the way income data is

set up.

THE COURT: You figure, on a monthly basis, it would be .2565?

THE WITNESS: Yes. The ratio of net, to represent net income and it doesn't say anything about what goes into the net income.

THE COURT: I said other than taxes.

THE WITNESS: Even that. This is the mechanical translation from this weekly-monthly inverted ratio when it poses the 90% rule.

THE COURT: In your expertise in this area, what would you say? This is a round figure? What is a round figure, as close as you can get?

THE WITNESS: The .2565.

THE COURT: Would you say that or not?

THE WITNESS: You could carry it out to moredecimal points. As I say, that is an exact figure because that just depends on the number of weeks in a month.

THE COURT: Well, if a fellow had more obligations, it wouldn't be right, would it? If one man had more than another man, it wouldn't come out. What you've done is take

all the figures available and you came out with this comparison.

THE WITNESS: If we were asking what is the normal average or most predominant actual ratio of rent to net income, I wouldn't give this figure of .2565 .

I'd look at the actual data and see what the ratio of rent to income is, in a specific case or specific cases, the population, whatever it is.

THE COURT: You don't have a figure so you don't know it.

THE WITNESS: Well, I have quite a few. I can tell you what it is for, the entire rented household population in New York City and breaking it down into different subject groups for black renters and white renters.

I can tell you what it is for all the welfare households in New York City. This is data from the housing survey that was mentioned yesterday.

I can make a comment of what it is

between welfare households and non-welfare households so we have lots and lots of data on rent data.

If we were to distinguish between the two classes of people, those that are wage earners and those that are on fixed incomes of all sorts, we don't have the same kind of detailed, accurate data for those two.

We have to make an assumption and make an estimate.

THE COURT: Very well. I'm sorry.

THE WITNESS: Thank you, your Honor.

Q If I may and without belaboring the point, I'd still like you to take an example, if you will. Just do the arithmetic with me and show me what you did.

Assume, for example, a man earns $400. a month, if you like, and do the arithmetic for me.

A That's not exactly the way I approached it. I'll be happy to show you the arithmetic that is involved in the method I did pursue, if you like me to.

Q Do it that way and see how we come out.

A OK.

Q First, how did you get to 25.65? What is the device?

A This is repetitious.

Q No. It's not repetitious.

A I'd be happy to describe it again.

Q Do it in numbers, if you like.

A Sure. There are 52 weeks in the year. There are 12 months in the year. We divide 52 by 12 and we get four and one-third so the average month is not exactly four weeks long. It's 4.3 .

If the average month were precisely four weeks long, instead of four and a third, then a rule that compared weekly income with monthly rent, instead of being called the 90% rule, would be called the 100% rule.

It would say that weekly income should be sufficient to cover 100% the monthly rent. If there were a rule of that sort, it would be called a hundred percent rule.

That would correspond exactly then to a rent/income ratio, if both of them were on a monthly basis, of .25, just exactly .25 .

Q Even though there are four and a third weeks in a month?

A No.

Q Your statement is not correct, is it?

THE COURT: He's going on four and a third.

A Let's move to the actual four and a third.

Q And the actual situation of 90% or not 90%.

Q And the actual situation of where it's a 90% rule.

A If we wanted to set up this rule comparing weekly income to monthly rent, what I called the inverted facts and we wanted the monthly rent income ratio to be twenty-five, not .2565 but twenty-five, then what the result would be, if expressed in terms of weekly income as a ratio of monthly rent, would be a 92.32% rule.

Q That's not what it is.

A Just a moment! In other words, if weekly income were required to cover exactly 92.32% of the monthly rent, that would correspond precisely to a rent/income ratio on a monthly basis of .25 .

I can continue, if you'd like and give a lot of examples.

Q Dr. Bickel, can I interrupt for a minute?

A Yes.

Q Let's see if you understand the question.

All I want you to do is use the 90% rule and just do the long division or multiplication or additions or whatever simple arithmetic that one does and show me how you got 25.65 .

Do you understand the question first?

A Yes.

Q If you understand the question, can we start with numbers, not your assumptions, what might not be but we're talking about actual facts.

Do a calculation on the basis of any assumed income that you'd like and show me how you come to 25.65.

That's all I want to know.

A OK. I will answer that question.

Q Can you answer it now because I'd like to conduct the examination my way? Can you do it now instead of some other time?

A Yes. I can answer it now. To explain - (interruption)

Q Don't explain it. Just do it, if you will. I'm really trying to cut this examination as short as I can.

A In order to do it, I have to explain it to myself.

Q If you want to explain it to yourself out loud, do it the way you want. Maybe if you explain it to yourself out loud, it will be clear to me.

THE WITNESS: Your Honor, this is why I explained the 90% rule as being inverted, tricky.

Q There may be people here who may do it just like that.

THE COURT: Maybe we need an expert mathematician.

A The mathematics and arithmetic are simple and if I did reduced it to a table and studied the extent of the arithmetic to have that in mind, I could have knocked it off like that (indicating).

Let me think of the explanation out loud and I'll show you the exact calculation I made.

The 90% rule states that weekly income should at least cover 90% of monthly rent. If we just moved from a weekly to monthly bases instead of weekly income, we're talking about monthly income. That is in a one-third times weekly income.

If we divide now .90, the 90% rule - I'm sorry - I have to back up and approach it from my method to get the answer you want.

Q Please answer. You've given us plenty. What I'd like to know is how you could get to the answer and I'd like you to do the arithmetic with me.

Is the question clear? You do understand that?

A Yes.

Q All right.

A Sir, I'm just going to have to reply to you by giving you the exact mathematical calculations without explaining it.

Q That's all I'm asking.

A First of al, considering a ratio of one-third divided by four and one-third. This equals a factor of .2308 .

Now, consider a ratio, using this basic factor of .2308, divided by .25 .

Q That's twenty-five?

A Twenty-five. OK. We'll change it around.

Consider the ratio I'm going to pose in a slightly different way. Consider a ratio of .2308 divided by 92.32 .

Q That's what?

A Now, sir, you're asking me to explain the

elements that go in here.

Q I don't understand that 92.32 .

A OK.

THE COURT: Originally, you were asking about the arithmetic.

MR. BRODSKY: We're not doing the arithmetic in the abstract. Each one of these has to have a meaning.

THE COURT: What is the 92.32? What is that?

THE WITNESS: The 92.32, sir, is what the rule would be that would correspond to a rent/income ratio of exactly .25 .

Q That's not what this is?

A Just a moment! In other words, we can set up here a schedule. We can calculate a schedule and I'll show you the arithmetical calculations of the whole series of these rules, weekly and monthly and we can look at the whole range. We can look at the 92% rule and the 90% rule and so on.

Those were translated into a rent/income ratio. The translation factor, if you will,is the .2308 . Now, one way to set up a relationship is the .2308 which takes into account, which is calculated, if you remember,

by the fact there are four and a third weeks in a month, which takes the ratio of .2308 and .25 - (interruption)

Q Can I stop you?

A You're interrupting me right in the middle of the explanation.

THE COURT: Let him finish.

MR. BRODSKY: OK.

THE WITNESS: The .2308 decided by .25 would give us a rule in the sense of the weekly income to monthly rent. It amounted to 92.32 .

Now, if we looked at the translation factor of .2308 divided by .2565, that would give us then a rule that came out to precisely 90.

Actually, I worked it through the other translation. I started with 90 and used the division factor of .2308 and that shows .2565 .

If we took the conversion factor, .2308, and divided it by, let's say, just for purposes of discussion here, .36, the .36 represents a rent/income ratio in the net sense since the rule applied to net income. .2308 divided by .36 would then give us a rule that amounts

to .241 for a rule that weekly income would have to cover 64.1% of monthly rent so you see we can construct a whole schedule of rent/income ratios which on one hand is expressed in its usual sense of monthly rents as a ratio of monthly income and we can set up the schedule of the inverted way of expressing it in terms of weekly income compared to monthly rent and calling that the comparable figure to a 90% rule.

We'd say exactly what the numerical magnitude of that rule would have to be, to be equivalent to each specific rent/income ratio we're interested in.

The translation factor in all cases is .2308, which simply expresses the fact there are four and one-third weeks in each month.

Q You say that's the answer to the question?

A Yes and the procedure that I followed was to first calculate the translation factor, .2308 . Once one has the translation factor, .2308, then one can work it either way.

One can look at the 90% ruling and say: What would be the precise ratio of rent/income and .2565?

Q That's what I never got to, .2565 .

A I translate, I divide .2308 by.90 amd the answer to that is .2565 .

Q Divide .2308 by what?

A No - .2308 .

Q Divide that by what?

A .90 and the answer to that should be .2565 .

Q Is it .2565?

Can you do it?

A It's .2565 to the second decimal point.

Q It is?

A Yes.

Q Have you done it?

A Yes.

Q Can't you do it with just nine? How do you understand the 90% rule, in English? How do you say the 90% rule states that weekly income should correspond to 90% of monthly rent? Is that what you understand it to be? Is that how it was given to you?

A In just the mathematical sense?

Q No, no; just in English. Is that the way it was explained to you and is that the basis on which you did your calculations?

A Yes. Could I complete my answer?

Q You mean we're doing the numbers again?

A The use of the translation factor.

Q Go ahead.

A 1. The translation factor, the .2308 - (interruption)

Q Point what?

A The .2308 . It can be used to go from the 90% rule or other rules expressed in that frame work of weekly income to monthly rent over to the rent/income ratio.

That's the way we go from the 90% ruling to the .2565 as a rent/income ratio or it can be used to go the other way and we can start out with a rent/income ratio, as I suggested, .36 or for any rent/income ratio we wanted to consider and we can transfer back in the other direction and see what rule, in the sense of weekly income to monthly rent it would correspond to.

In other words, we can move it once we have the translation factor. That's all I want to say to complete the answer.

Q Does that have anything to do with any numbers we have been talking about, what you just said?

A Yes. It does because I've referred to

different income ratios and the magnitude then of the rule and it would correspond so it does refer to things we discussed.

Q You're talking about a 96% rule? Can you tell me how you came down to 20.7?

What factors did you use for federal income taxes?

A Now you're asking about the transition from net income ratios based on net income and its relationship to a rent income ratio based on gross income. The Government data is all expressed in terms of gross income so in order to use the data, any of the Government data, it's necessary to move from net income ratio to a gross income ratio.

Here, it is not a precision mathematical calculation but involves the judgment of what is an appropriate amount of deductions to use in moving from gross income to the concept of net income, which is the appropriate one in the situation.

The ideal way to move from gross income to net income, of course, would be to know the magnitude of deductions that are taken from each kind of population given and so on.

Q Or each person?

A Or each person. Since we do know of those data, instead, we move from the net income/rent ratio to the gross income/rent ratio.

The one corresponds to the 90% rule, the .2565 . Now, the question is what deductions to take into account on an overall average basis.

I utilized the data on federal tax withholdings. This is from the statistics of the Internal Revenue Service from 1969.

Q Do you have those here?

A No. I don't have them here. All I can do is cite. I have the magnitude of it.

Q What is the citation you used?

A It's Internal Revenue Service Statistics of Income, 1969, Individual Income Tax Returns.

Q May I see what you're reading from?

A This is my own work, prepared for my own use, primarily, and in the analysis of the impact of the 90% rule on New York City rented households.

It's the report that I prepared from which the summary tables were extracted, entered in evidence.

THE COURT: It doesn't matter what it is. He based it on that citation.

THE WITNESS: This isn't the full report,

by the way. I've taken some of the tables out and that's what's left. I have the full copy of the report available.

THE COURT: You've answered. We're wasting a lot of time.

Q What figures did you use?

A May I have that? That's on it.

Q May I have this full report marked so we can use?

MISS BALEN: Wait! What do you want to have done?

MR. BRODSKY: I want to have his report marked.

MISS BALEN: I object to the marking of the whole report. If there's any particular portion Mr. Brodsky feels or sees the witness is using to refresh his recollection, then I think Mr. Brodsky is entitled to see that part of it but it is, in fact, something which qualifies as a work product done for the purpose of my requests.

THE COURT: I don't see why the whole report will throw any light on the problem. Why don't you point out what you refer to?

MR. BRODSKY: I don't have the vaguest idea. If he based his report on the testimony - (interruption)

THE COURT: He didn't say his report. He said working papers, prepared for himself.

MR. BRODSKY: I understand and I'm entitled to see it.

THE COURT: He gave you a copy, didn't he?

MR. BRODSKY: I have a portion of it.

MISS BALEN: He's taken it. It was in the nature of a grab.

MR. BRODSKY: I would like to have the full report marked.

THE COURT: Do you have more of this work paper?

THE WITNESS: Yes. I have a copy.

THE COURT: Is that a copy of what counsel has in his hand?

THE WITNESS: Yes, sir.

MR. BRODSKY: I thought you said there were portions taken out of it?

THE WITNESS: Yes. That segment and this segment, I've been refreshing myself from. This

constitutes - (interruption)

THE COURT: More than what he asks?

THE WITNESS: ...more than what he has in his hands, yes, sir. There are other summary tables introduced in evidence here.

THE COURT: You want to see the whole report?

MR. BRODSKY: The whole report, if I may.

THE COURT: Let him see the whole report.

MISS BALEN: I must enter my objection to this whole procedure.

THE COURT: I'm not letting it into evidence.

MR. BRODSKY: I'm not offering it.

MISS BALEN: Your Honor, there is no way Mr. Brodsky could have obtained it through any procedure that I know of.

He has dragged it from the witness a few minutes ago and I don't see any legitimate way of going about it.

THE COURT: If he used it in his testimony, he is permitted to look at it.

MISS BALEN: I'm sorry.

THE WITNESS: The witness is testifying from the report,

MISS BALEN: He is not, your Honor.

THE COURT: He made several references to the report.

MISS BALEN: That's correct.

THE COURT: So Mr. Brodsky can certainly look at those.

MISS BALEN: But the witness' testimony is not verbatim, does not follow the report verbatim.

THE COURT: But the report is refreshing his recollection. It is not verbatim. Of course, it is not verbatim.

MISS BALEN: To that extent, the port of that report used to refresh the witness' recollection, I agree Mr. Brodsky may see it to see what the witness is looking at.

THE COURT: That's what he's got.

MISS BALEN: Not the whole report. It's highly improper. In any procedure of discovery, it would have been an attorney's work product and excluded.

THE COURT: That's nothing here that says

the attorney prepared it. The witness said he prepared it.

MISS BALEN: At our request, I think he said.

MR.BRODSKY: But this witness is testifying.

THE COURT: He is qualifying as an expert in this area. I don't know why Mr. Brodsky couldn't see his work papers, of the witness, himself, but if it is your work paper, I think it would be entirely different.

MISS BALEN: Of course the witness has prepared it but I did object to Mr. Brodsky seeing the entire report.

THE COURT: You may have your exception.

MISS BALEN: Thank you.

Q Is this the entire report, this one here(indicating)?

A Yes.

MR. BRODSKY: May I have this just marked for identification, please?

(The report so identified was marked Defendant's Exhibit A for identification)

Q May I see that reference to the tax? We're talking about the tax?

A Yes.

(The witness handed a paper to Mr. Brodsky)

Q Now, can you tell me how you came to this 20.72% figure?

A Yes. As you'll see from the information you now have - (interruption)

Q Do you need it? I'll give it to you.

A I don't think I do but I guess I should. The other is an exact copy of it.

Q What page is it on so I can follow it.

A Page 2, footnote 3, the amounts of deductions from gross income that were withheld by the Federal Government in the form of personal income tax, withholding and Social Security contributions.

Social Security deductions from pay checks amounted to, overall, an average of 19.2% of gross income.

Applying that rate of deductions to gross

income, the ratio of monthly rent to - do you want me to go through the painstaking process ofdoing the arithme tic?

Q It's the only way I have of testing the accuracy of it, Mr. Bickel, I'm afraid.

A May I give you first a hypothetical in terms of round figures for .25?

Q Surely.

A If we start out and I'll do it in the way you suggested previously using, actual income figures and actual figures.

If we started out with a gross income of a thousand dollars a month and a rental of $200. a month, then the rent/income ratio in gross income would be a ratio of 200 to 1,000. That would be .20 .

Now, we're moving from gross income, a thousand dollars, to net monthly income, in the amount of income, which is exactly 20%.

Then, the net monthly income would be $800. The rental hasn't changed. It's still 200 so now the rent/income ratio, to net income ratio is 200 to 800 or .25 .

Now, the net/rent income ratio - actually, I had to do the procedure in the other direction since

we're starting out with a net/income ratio corresponding to a 90% rule and, consequently, one expresses it in net terms and we saw it was .2565 and the percentage of deductions, using the federal tax withholding, amounts to 19.2% and so, consequently, the ratio of rent to gross income that we end up with, working back in the other direction and using a slightly slanted ratio of .65, instead of .25 and .92 rate of productability, going from gross to net, we get a ratio of rent to gross income which, instead of being exactly .20 is 20.72 .

Q What I want to know is how you got the 20.72 . You didn't show me that arithmetic.

A Let's start with the figures I used before, 200 rent, and 800 net monthly income. If we adjusted those figures so that the net income ratio, instead of being exactly .25, were instead .2565 and now let's say that adjustments took place entirely in the income part of the thing, it would be slightly under $800. and now we're moving from net back to gross which rate of reduction is 19.2% .

Suppose I just give you the final equations?

Q Suppose you tell me what the numbers are.

A Sure. Using this example, the monthly

rent of $200. and a gross monthly income of $1,000., the formula or equation in which X represents the rent/income ratio in the gross sense, which is what you're looking for, the 20.72, would be the following:

X would be equal to 1,000 times 200 divided by .2565 and that whole is divided by one minus 19.2%.

Q That's the way you did it?

A In effect. I don't know precisely what sequence of arithmetic steps were followed but these steps include all the steps and this is a hypothetical case.

Q Is there a way to explain in English why you did it this way, why you take a thousand and the whole thing, and divide by 19.2%?

A It would be something like an arithmetic lesson. There are a lot of alternative ways to take these various steps.

THE COURT: He has told you how he did it. If you think that is wrong, you can bring it up. I think you have pursued it far enough. Move on to something else.

Q You used the 19.2% as a steady tax deduction, the same tax deduction for every person, as the same; is that correct?

A It's an average. It never applies that everybody is at the same figure.

Q But you used 20.72 as the average?

A Yes.

Q And you understand people who have more children pay less tax and the formula as to them would be more liberal. Is that correct?

A If we subdivide the population by factors like family size or type of income and type of exclusions, yes, then the exact rent/income ratio, gross/income ratio, which would correspond to the 90% rule would vary from family size to family size to the type of income recipient, etc.

Q And it becomes more liberal with the lesser amount of taxes the person is required to pay?

A I'm not sure what you mean by "more liberal."

Q More easier for a person to qualify in the 90% rule.

A Yes. That's true.

Q And it's most liberal for the person who pays no taxes at all. Is that correct?

A No. It would be most liberal for the person who pays no taxes and also has no other fixed

obligations from moving from gross income to net income.

Q I'm talking about taxes, only as far as taxes are concerned.

A In so far as taxes are concerned, yes, it would be most liberal for people who pay no taxes.

Q And most liberal for welfare recipients because they pay no taxes?

A Welfare recipients and others that might be on low fixed income.

Q Who pay no taxes?

A Yes.

THE COURT: I think you have covered that pretty well.

Q Now, youre an economist and, as an economist, you understand laws of supply and demand? Correct?

A Yes. I think so.

Q You testified yesterday about things that happened in the marketplace; is that correct? Anyway, whether it is or not, do you understand there is a difference between the person who goes to the marketplace, who goes, for example, to a food store and buys food and pays for it and walks away with food, on the one hand and on the other hand, a person who buys something on time, whether it's a house or an automobile or a washing

machine or paying rent over a period of time?

Do you understand the difference?

A Yes. Of course. The difference between a durable goods and a non-durable goods.

Q And you understand that, therefore, in our city, whenever a person is buying something on time, paying rent over a period of time, mortgage, car payments, that the person who is lending the money or giving it, attempts are made to see whether or not the person on the other side of the transaction is capable of meeting the payments? Is that correct?

A That an attempt is certainly made; whether or not it's done accurately is another question.

Q But the attempt is made?

A The attempt is frequently made.

Q But it is a logical thing to do without regard to racial discrimination?

A Certainly.

Q And you understand, when people go and borrow money on homes one of the things they are after is how much money they have, how much money they make? These are factors that go into a decision as to whether or not a bank will make a loan; is that correct?

A That is correct.

Q Do you know what rule of themb is used, if any, by bankers in the City of New York when they figure mortgage payments?

A No. I don't.

Q The fact that a landlord, for example, sets economic standards is consistent with his desire to be sure that the person who comes into the building will have the ability to pay the rent; isn't that correct?

A Yes.

Q And that's quite apart from any racial problem; isn't that correct?

A Well, I don't know that it's apart from any racial problem or not. I would say, in terms of the impact, it's certainly not a part. In terms of the intent, I have no idea.

Q You have no idea what the intent is?

A As far as the intent, of course, as far as the impact, it's not a part; it's inseparable.

Q The impact is the same in our city when people are borrowing on mortgages or cars or washing machines or anything else; isn't that correct?

A I don't understand.

Q The impact to the extent that black people, you said yesterday, made less money than white people and,

therefore, they cannot afford more expensive housing, cars, etc.?

A I would say these things are not, that is, purchasing durable goods of different sorts, housing on the one hand versus other kinds of consumerable goods, cars and so on, I would say is not comparable mainly because housing constitutes a basic necessity in the sense that other durables do not and are in the categories of luxuries or near luxuries, except for low income people.

Consequently, the decision to enter into a contractual relation, debt obligations and so on, in the purchase of housing, really stand on a different footing and a decision to pay a car, a refrigerator and so on and there's evidence on this.

This is not just my opinion. There is evidence on this. That shows up in terms of the proportion of income that the people are willing to put into housing.

It's a very substantial portion of the income that people are willing to put into housing because, simply,it's such a basic necessity.

Other things can be sacrificed. You can get along without a refrigerator and without a car

at all in the City of New York but you can't get away with housing so from the point of view of the purchaser, they certainly are not comparable and there are fundamental differences.

Q When you were doing your calculations on the 90% I think you said you took a period of three months when Lefrak Apartments were actually vacant and offered for rent. Is that what you took?

A I took the period of three months for one purpose only, which was to have data on what the typical cost of a Lefrak Apartment was at each site and what the minimum cost of a Lefrak Apartment was at each site. That's all the data we used.

Q Do you have any idea whether that 3-month period was representative of any other period?

A Well, it would be a very unusual situation if the Lefrak Organization varied its recommendations substantially over the course of the year.

Q Do you know?

A I don't know whether they did or not but it certainly would be unusual if they do.

Q Do you have anything as a statistic there in a 3-month period that a 3-month period was representative?

A Yes. I do. On general grounds, there's no reason whatsoever why it should not be a perfectly representative saving.

It's a long enough period for seasoning therein. I don't know if Lefrak rents to students. If they do, it would be seasonal.

It applied to, I gather, most of Lefrak Apartments but not all of them but certainly a substantial portion of Lefrak Apartments.

It was not just the listings taken from the Lefrak offices. Copies were taken. The actual listings were taken from the Lefrak offices so they were not some special selection of apartments that were picked out on some systematic basis and on all those grounds, as a statistic, I can't see that is a perfectly adequate sample in order to give us figures on what the typical rental prices are for Lefrak units for different sizes.

Q It would have been better to know the actual rentals, wouldn't it?

A No. This is a good sample. The actual rentals should be close to this.

Q Did you ask whether the actual rentals were available?

A No. I had no communication with the Lefrak

Organization.

Q Did you ask Miss Balen, the attorney you are working for?

A Well, since this action, you know, this pile of listings, there was a huge pile, these were weekly listings.

The biggest part of the job was to go through and eliminate duplications so I got down to a duplicated list of all the apartments that were available during that 3-month period and since it was sizeable enough so that it certainly ought to be, on general grounds and theoretical grounds, it ought to be a good sample, there was no reason to ask for other data.

In fact, if the Lefrak Organization, itself, were to produce data on what the average rental price was for each of their apartments, I imagine they would follow a procedure pretty near to what I followed.

Q If I told you the rental was approximately at its highest during that period, would you say, assuming that's true, that would mean that you did not use a representative sample?

A You mean normally during that time

the prices are highest during this period?

Q No, no. That particular period of time that you took, that it was at its highest.

A That's interesting. From those figures on the cost of Lefrak Apartments and applying the 90% rule, as it's applied to these different apartment sizes, that produced the gross income levels that a person would have to have to rent those apartments and those were very, very high, $10,500. for a single person family.

If you tell me that the rental prices that I was using were inflated, they were abnormally high?

Q They were high, according to the market price.

A We have to agree that if I were to use somewhat lower rental figures, then the total amount of income required to qualify under the rules would be somewhat lower.

It would be in the range of maybe $9,500. up to $19,000. It depends on what the rent was. I worked it up two ways, on the basis of rental figures in order to have some idea of how much these income limits would be, figured by variations in the rents.

For example, as I described yesterday, I first calculated it on the basis of the average rental cost for a one-person family and the average cost for a two-person family and so on and then I calculated it on the basis of the minimum rental price in that three months of listing.

THE COURT: If you want to attack it, you can do it through your own witness.

Q You testified yesterday about some percentages. I think you said under the Rand study, that you referred to, and correct me if I'm wrong because my notes may be incorrect or my figures may be, but that certain classes of people were paying .374 of their income in rent and you called it an "implied rent income ratio."

Do you recall that?

A Yes.

Q Would you explain what you meant by that?

A May I give a little background on it and Rand did so I can explain how I used the figures?

Q Sure.

A Rand was interested in - (interruption)

Q If I can interrupt you one minute, by the "Rand study," is this the book I have here?

A Is that volume two? I understand there are several volumes. May I see it?

Q Yes.

(Mr. Brodsky handed a book to the witness)

A Well, this is either a subsequent volume or a subsequent version. The one that I worked with is this study - I'm sorry - it's not this study. This study you're showing me is entitled, "Welfare Housing in New York City" conducted by the Rand Institute.

I have not seen this or drawn a study from it. The Rand study I have referred to is entitled "Rental Housing in New York City," Volume 2,"The Demand For Shelter."

Q OK.

A In this part of their study, the Rand study asks:

How much rental payments are necessary in order to cover the full costs of maintenance, repairs, amortization, normal profit rates on rental units that meet the quality standards, as generally established by the Mental Health Association and used by the Bureau of Labor Statistics when it refers to standards of housing and so on?

How much rentals would have to be in order to meet the full cost of maintenance, amortization and normal profit rates for supplying standard quality housing and they asked the question: How much, income would families have to have, different family sizes, in order to afford:

1. Those rents that would cover the full cost of the housing; and

2. Have enough income left over to meet the cost of basic necessities and these have been calculated by the Community Council of New York?

Rand further took account of the variation in gross incomes, between gross income and their conceipt of net income, which they called "disposable income," which it is calculated or is estimated by the subtracting from the gross income federal tax and also insurance contributions and also work related expenses so their concept of "disposable income" would be a more accurate concept, as applied to working people.

Obviously, that had work related expenses as well as tax deductions. They did not take into account their concept of "disposable income" of other fixed debt obligations so in that sense, it suffers

from the same inadequacies that my method did but on this basis of only subtracting the work related experses and the tax deductions and not subtracting other fixed debt obligations, Rand was now able to calculate the amount of disposable income of a family in order to cover its rent payments and to cover it other basic needs and they were able to calculate the gross income, that a family would have to have in order to cover its rent payments, its other basic necessities and others.

Then, they could calculate the rent/income ratio both on the basis of gross income and on the basis of disposable income and those figures I quoted yesterday. If we look at gross income first - (interruption)

MISS BALEN: May I look at that, please?

THE COURT: Haven't we go over that?

MR. BRODSKY: He testified to it on direct.

MISS BALEN: Your Honor, the title was given on direct examination.

THE COURT: He made reference to Rand where he compared it.

MR. BRODSKY: Yes, but I didn't have an opportunity to see what specific numbers he was using.

THE WITNESS: This is Page 41. This leads to the answer of your question of where I got the figure of .374 from as a particular gross income ratio that might have relevance.

On the basis of the ratio of rent to disposable income, as Rand calculated it, this ranges from .24 for a six-person family up to a figure of .46 for a one-person household, a one-person rented household.

In other words, this says for a single person renting a household that the income he would have to have, in order to cover the rental cost of standard housing that would cover the full cost of standard housing and also covering basic necessities, in terms of that disposable income, he can afford to pay up to 46% of his disposable income for his rent.

Q As a single person?

A As a single person. A two-person household could afford to pay up to 36% of its disposable income for rent and that's rent that would cover the full cost of the housing.

A three-person family could afford to pay

me about the refrigerator in the apartment and her and her husband was leaving to go to Florida and I don't remember the rent she told me and she said her and her husband was very comfortable in there and she knew I would be.

I said, "Thank you" and the other lady didn't know any other way to get into the apartment on the seventh floor so I wouldn't be able to see it so I said, "Thank you very much; I like this," and so she said, "Fine."

The lady said to me, "You're going to take the apartment?"

I said, "Yes" and I left the apartment.

Q Is that the end of what happened at Clarkson Avenue?

A As far as me looking at the apartment, until I went downstairs.

Q After seeing the apartment, did you make any decision concerning the renting of it?

A Yes.

Q What was the decision you made?

A I wanted the apartment but I said - (interruption)

Q Please try to answer just the questions.

After you decided to try to rent the apartment, what steps did you take to rent it? What did you do in order to rent it?

A I called Mr. Coochy and I said to him, "I like it and I want to rent it" so he said, "Fine."

Q How did you know you were speaking to Mr. Coochy?

A Because he was the only man in the office that you called and I said, "I'm the lady you gave the address from Clarkson to look over the apartment" and said, I asked, "Who are you speaking?" He said, "Mr. Coochy. Do you remember me?"

I said, "Yes. I do."

Q What was the conversation?

A He said, "Bring in your husband's Social Security card, the card with numbers on it."

I said, "I know what a Social Security card is. I don't have my husband's Social Security card."

He said, "Get it from your husband."

I said to him, "My husband and I are separated."

Then he says to me, "How are you going to pay the rent for the apartment?"

I said, "I receive public assistance."

He said to me, "We don't rent to welfare recipients" and he hung up the phone.

Q What was your reaction to this conversation with Mr. Coochy?

MR. BRODSKY: I object, your Honor.

THE COURT: I don't think it's properly stated in your question.

Q What was the effect on you, Mrs. Boyd, your conversation with Mr. Coochy?

MR. BRODSKY: The same objection.

THE COURT: What was the effect? You asked what is the effect upon her?

MISS BALEN: Yes.

THE COURT: Very well.

A Well, I was very, very upset and I felt like he had an apartment available; he was willing to rent it to me until I told him I was a welfare recipient.

Had I made up a story for him, then maybe he would have given me the answer so I called Miss Balen and told her what happened.

Q We're just talking about the effects on you. You're telling us the complete effect as you

remember?

A I felt very - (interruption)

THE COURT: She asked what reaction did it have on you? Did it give you a headache?

THE WITNESS: I was and I felt terrible and I felt I was being discriminated against because I didn't have a job and I didn't have a job and I'm telling this guy I was a welfare recipient and the Welfare was willing to pay the rent for me to have the apartment and he still rejected me and I thought it was very unfair.

Q Mrs. Boyd, are you now living in an apartment?

A Yes.

Q What is the rent you are paying?

A $260. a month.

Q How did you find that apartment?

A I found that apartment with the aid of the Social Service.

Q Are you comfortable living in Far Rockaway?

A No. I'm not.

Q What is it that's not making you comfortable?

MR. BRODSKY: I object, your Honor.

THE COURT: She can describe what caused it, being that this was in Far Rockaway, that caused her inconvenience or disturbance.

I don't think she can describe any emotions, things of that nature, unless it's an important event.

A For over a year there you haven't had any heat or hot water, which I still don't have. My children attend school in Brooklyn and the travel is very expensive on me in order for them to get to and from school.

It's very cold out there and by me having no heat and hot water, it's even worse because I'm right between the bay and the ocean.

MISS BALEN: I have no further questions of this witness at this time.

THE COURT: Very well. Mr. Brodsky?

CROSS-EXAMINATION BY MR. BRODSKY:

Q Mrs. Boyd, at the time that you were looking - strike that - before you went to look for the apartment in the Lefrak building, you had been to other rental agents, had you not?

A Yes.

Q When you say all of them told you with respect to any apartments you wanted to rent, they told you they wouldn't rent because you were a welfare recipient?

A Yes.

Q About how many times?

A A number of times.

Q More or less?

A When I say a "number of times," like it happened so many times until I was at the point when I reached Lefrak I was very depressed and disgusted because I felt if the Department of Social Services is willing to pay any amounts of rent for me, then I don't see no reason why I shouldn't have the apartment.

Q When you went to the Life Realty office, just at that point in time, I think the situation hadn't changed and you had five children?

A Yes.

Q And you went to look at an apartment that had two bedrooms; is that correct? The apartment on Clarkson Street?

A It had two bedrooms but the way the apartment was made, I could easily have had three bedrooms because I didn't need a dining room area and I have

four boys and one girl and I was like going to use the living room myself for a bedroom and with the sofa and my daughter and two boys in the living room area and fix it up as a bedroom and it would have accommodated me.

Q Were you aware, at the time, of any occupancy standards that exist in Lefrak Village?

A I don't understand what you mean.

Q Did you know about any rules that say there shouldn't be more than a certain amount of people in a certain size apartment?

A No.

Q Did Mr. Coochy, at one point, tell you that for the apartment you wanted to rent there were too many people in your family?

A No.

Q When you looked, you say, when you went to Life Realty, you looked at the bulletin board and saw apartments that were vacant; is that correct?

A That's correct.

Q Did you see any signs in Life Realty indicating these kinds of standards that I'm talking about, that there should be a certain amount of people in the apartments?

A No.

Q At the time that you were looking for the apartment in this building, was your total source of income from welfare?

A Yes.

Q And the amounts that you received, I take it, was the amount in accordance with the applicable statutes; is that correct?

A Excuse me?

Q In other words, you weren't getting any more than was permitted by law, you weren't getting any other allotments other than is in the law?

A Oh! I had some other money, yes.

Q From what source?

A You see, I had just gotten quite a lot of money from the Separtment of Social Services, for my own personal needs.

Q How much was that?

A Oh! It was almost $2,000.

Q They gave you that amount of money?

A Yes.

Q Did you tell Mr. Coochy that?

A No. I didn't.

Q For what purpose did they give you the

money?

A For my own needs.

Q Gave you a check for $2,000?

A It wasn't quite $2,000. but it was pretty close to it.

Q And they told you to spend it however you want to?

A Yes.

Q How often have you done that?

A Have I done what?

Q Gotten money from the Department of Social Services.

A Just once.

Q Was that above and beyond the amount you were receiving every two weeks?

A Yes.

Q Do you know under what statute or rule or regulation you received that money?

A Yes.

Q What was it?

A Like I said, it was for my own personal needs. It was money granted to me that I wasn't getting and the Department of Social Services decided I was entitled to the money and they granted me the money.

Q Now, you had been, before you went to see the Lefrak Apartment, you had been evicted from a different apartment, had you not?

MISS BALEN: Wait. Your Honor, I object to that question. This, once again, is a matter that came up during a deposition. It is our position that, since the Lefrak Organization did not accept an application from Mrs. Boyd, made no inquiry concerning any personal circumstances here, that any questions that might now tend to reveal such information is improper and beyond the scope of this case.

THE COURT: How about that?

MR. BRODSKY: Your Honor, the testimony from Mr. Coochy is going to be a direct contradiction to the testimony of this witness.

Mr. Coochy will testify that he never told this withess or any other applicant for an apartment that welfare recipients are excluded from Lefrak buildings so the testimony is going to be exactly the contrary.

This woman could have come in and given Mr. Coochy all the information and her application would been considered.

MISS BALEN: If your Honor please?

MR. BRODSKY: Let me finish. If I ask her about the past events - sorry.

THE COURT: Did he ask her about the past events?

MR. BRODSKY: She never came back to reveal any information.

THE COURT: I mean the eviction?

MR. BRODSKY: No, sir.

THE COURT: He never asked her about it?

MR. BRODSKY: No, sir.

THE COURT: But it would have been asked had she filled out the application but she never came back?

It never got that far?

MR. BRODSKY: No.

THE COURT: He told her he wouldn't rent it?

MR. BRODSKY: That's what this witness said Mr. Coochy said.

THE WITNESS: And that's the truth.

MR. BRODSKY: Please!! Mr. Coochy will be here to testify to the contrary.

THE COURT: And he will testify he did not

tell her?

MR. BRODSKY: He didn't tell her anything. Yes, your Honor. She went to see the apartment. What he did tell her is she would be unable to occupy it because of the number of children that she had.

THE COURT: It was on occupancy grounds then?

MR. BRODSKY: Yes.

THE WITNESS: He never asked me how many children I had. He never knew how many children I had.

MISS BALEN: We have also deposed Mr. Coochy. He has no recollection, according to that deposition of what happened.

In any event, it would be irrelevant. We did search the defendant's records of an application. There was none taken.

The portions of the deposition of Mrs. Gelman, who is Mr. Coochy's supervisor, concerning the standard interview of an applicant, for example, indicates that there is no question asked concerning, "are you evicted" or "are you not evicted" .

In any event, until there actually was an application taken, regardless of what Mr. Coochy may or may not have told Mrs. Boyd to discourage her, this question could not even have been relevant to the question of why she did not get the apartment.

Without the application having been filled out and considered, there would have been no reason for the defendant to know any of this information about her and this would be true regardless, even though no application is given, regardless of the reason no application was taken.

THE COURT: Of course, if he asked her and she told him why, he might tell her there's no use making out an application because of this event.

MISS BALEN: Even according to Mr. Brodsky's characterization of what the future testimony would be, Mr. Coochy would have told her, "You have too many children for that apartment" and would not have asked and said, "You have been evicted and you cannot apply."

THE COURT: You can't believe in events

unless it was asked of her.

If you want to prove it up for a bill later, I might consider it. I might do that.

MR. BRODSKY: Yes. The only point being, your Honor, is you will hear what our procedures are and we do attempt to learn, when we are considering applicants, what their past tenant history has been to the extent that we can.

I certainly agree we never got that far here but in the consideration of whether or not Mrs. Boyd would be an appropriate tenant, had we gotten that far, I think it is an appropriate question.

THE COURT: No, but you referred it out of hand because of the occupancy.

MR. BRODSKY: Yes, sir.

THE COURT: I thought if you could raise this defense, as I said before, if you want to prove it up, you may and if I change my mind, it would be available for me to consider it.

MR. BRODSKY: I would appreciate it if I could get the testimony.

MISS BALEN: May I say one other thing?

In this complaint, we have not sought an apartment for the plaintiff as a form of the complaint.

THE COURT: You have not?

MISS BALEN: We have not sought an apartment for the plaintiff as one form of relief. We have not sought that. We have not sought to have the defendants rent an apartment to the plaintiff.

That is not the object of this litigation.

THE COURT: I'm afraid I don't understand.

MISS BALEN: Mr. Brodsky used the term of how this complaint would have been considered had he known that information.

The fact is that's completely irrelevant because we are not looking for an apartment for the plaintiff.

THE COURT: Of course, it might be relevant if other realtors asked the same questions and she was obliged to tell them of this event.

There might be something in there. I hadn't thought of it in that term.

In other words, after they turned her down, she continued to try to get apartments and she was turned down on this ground? There might be something to it.

Let's let Mr. Brodsky prove it up under the circumstances you indicated.

MISS BALEN: I take exception.

THE COURT: And it will have no prejudice on me.

MR. BRODSKY: Thank you, your Honor.

Q Were you, in fact, evicted from an apartment before you applied for the apartment in the Lefrak building?

A I have to answer that with an explanation.

Q Go ahead.

A The landlord wanted the apartment because I was only paying $80. a month. He wanted me out of the apartment for the simple fact he wanted to go up on the rent.

We went to court and I could have fought him but I didn't because I agreed to move out of his apartment.

What I wanted was time enough to find myself an apartment, another apartment.

Q But the upshot was an eviction proceeding was brought and you were evicted?

A I left voluntarily. I didn't fight him. I just gave him the apartment so, therefore, I wasn't evicted. I left on my own free will.

Q But the eviction proceeding had been brought?

A Yes.

Q And after the eviction was brought, before a decision, you left the apartment; is that it?

A Yes.

Q One of the things you said was that your children are going from Far Rockaway, Brooklyn, to go to school?

A Yes.

Q There are schools in Far Rockaway, aren't there?

A Yes. There is. My daughter goes to public school. My son goes to a private school.

Q That's by choice?

A Yes. The school my daughter goes to, she's been in that school seven years and going to graduate next year plus they had, up until this year, they had one class per grade. It was a very small

school and they were familiar with all the teachers and everything and by being in this school all her school life I saw no reason to take her out of there and she would be going to graduate next year and go to high school and she was born and raised in Brooklyn and I saw no reason to leave Brooklyn just to have a place to stay in.

Q Were all the other children going to school in Brooklyn as well?

A Yes.

Q And, of course, there are schools in Far Rockaway available for all the children, if you chose to send them there?

A Yes but I felt the people should be able to live where they wanted, if they can afford to pay the rent so they should be in schools they want.

Q Mrs. Boyd, did you ever speak to a lady at Life Realty?

A No.

Q And you say that after you saw the apartment on Clarkson Avenue, you never went back to the office of Life Realty?

A No. I called him on the phone. The only time I saw the lady - I don't know if she's

connected with Life Realty. She took me up to see the apartment. Therefore, I came in contact with two women. One was the occupant of the apartment which they were packing to move out because they were going to Florida. This was her reason for moving and the woman who lived downstairs, who took me up to see the apartment.

If they were connected with Life Realty at all, I don't know.

Q I mean a woman in the same office where Mr. Coochy works.

A No.

Q And you say you never told a woman there how many children you had?

A No.

Q And what size apartment you wanted?

A No.

MR. BRODSKY: No further questions.

MISS BALEN: No redirect.

THE COURT: Very well. You will step aside. Is she excused?

MISS BALEN: Yes.

THE COURT: Is this the plaintiff we had to wait for yesterday?

THE WITNESS: Yes. I'm sorry about that.

THE COURT: If we need you again, I hope you will get here quicker.

(The witness was excused)

MISS BALEN: My next witness is Bernard Indik.

BERNARD PAUL INDIK, after having been first duly sworn, testified as follows:

THE COURT: State your name for the record.

THE WITNESS: Bernard Paul Indik.

DIRECT EXAMINATION BY MISS BALEN:

Q Professor Indik, what is your address?

A 32 Kendal Road, Kendal Park, New Jersey.

Q Are you presently employed?

A I am.

Q In what capacity?

A I'm a professor at Rutgers University. Presently, I am a full professor at the Graduate School of Social Work at the University and the Graduate School.

Q Will you tell us what your higher education background is?

A Sure. I taught at Gratz College in Philadelphia. I have a BS in Economics from the Wharton School in Pennsylvania. I have a Textile Engineering

Certificate from the Philadelphia Textile Institute. I have a Masters in Business Administration, Industrial Relations, from the Wharton School, University of Pennsylvania. I have a Masters Degree in Psychology from the University of Michigan and I have a PhD in Psychology from the University of Michigan.

Q What subjects do you teach at Rutgers?

A There are quite a variety of them. Do you want what I'm teaching now or what I have taught in the past?

Q Yes. Why don't you give a list of what you have taught and what you are teaching now?

A OK. I have taught courses in Research Methods, in Statistics, in Advanced Research Methods, in Research Methods in Social Welfare.

There are a series of three courses that I presently teach. I teach another course in Research Strategies and Social Planning and Administration.

I teach a course in Theories of Social Planning and Welfare Policy. I teach a course in Organizational Behavior called The Structure of Progress in Social Welfare Administration and a course in Universal Administration and Change of Social Service Administration.

A good deal of the work that I do now at the University has to do with supervising PhD students and also doing research work in social problem areas, a variety of different problems I have been involved with but possibly the most cogent to this particular case have to do with studies that I have done in reference to population and labor force studies, which were done in Flushing in the late '60's and studies in housing that were done in the late '60's in New York and also housing studies that were done in New York City, '67, '68 and '69 and most prominent, a study of housing and welfare recipients, which was most recently published in this book here (indicating).

It is called "The Ecology of Welfare," which I wrote with Professor George Sternley (phonetic spelling).

Q Doctor, do you have any teaching experience outside of Rutgers.

A Yes. I taught several courses which I was at the University of Michigan. Again, they were tests and measurement courses and research oriented courses.

Q Aside from teaching, do you have any employment experience?

A Yes. For a variety of years I've been in different research capacities with various organizations.

This, basically, started while I was in the Army in 1956 and '57. I was involved in two studies for the Army where I was functioning in the first part as a data collector in minimum manpower studies that the Army was doing and, secondly, I was stationed at the Medical Nutrition Laboratories, Fitzsimmons Army Hospital, as a Statistical Assistant where my job was to to advise medical nutrician research people as to statistical design and appropriate statistical sampling and research strategy, generally.

Subsequent to that time, from '57 to '61, I was an Assistant Study Director and in '61 Study Director with the Survey Research Center at the University of Michigan where I was invdved in a variety of social survey type studies in conjunction with the variety of people at the Survey Research Center.

After that, when I came to Rutgers University, I had a joint appointment with the Psychology Department from '61 to '65, I guess it was.

With the Institute of Management and Labor Relations and the University Extention Division,

that is, the Institute of Management-Labor Relations, I was a part of the Extension Division and in that period we were involved in a variety of research studies, some of which may have some background relevance and in '65, from '65 to '68, I was an Associate Research Specialist.

That's equivalent to an Associate Professor but with research specialization, primarily, with the Institute of Management and Relations but with its Psychology Department and in that period I had a variety of research studies primarily related to studies of the unemployed poor.

This was primarily, at that time, focused in Newark but they were primarily using survey research methodology.

In 1968, I became Associate Professor and Assistant to the Dean of the Graduate School and have been doing research work and teaching at the Graduate School of Social Work and at the Graduate School University since then.

Q Are you a member of any professional societies?

A Yes. I'm a Fellow of the American Psychological Association. I am a Member of the Eastern Psychological

Association. I am a Member of the Council on Social Work Education. I am a Member of the Society for General Systems Research. I am a Fellow of the Society for the Psychological Study of Social Issues and a Member of the American Academy of Political and Social Science.

Q How does one become a Fellow of the American Psychological Association?

A There is a procedure , a procedure with the individual, which the individual involved has also direct control of.

It is an honor accorded individuals, maybe one in, I would suspect, maybe one in ten of the people in the field, maybe less, in terms of proportion.

THE COURT: Is there a contest over his qualifications?

MISS BALEN: Yes.

MR. BRODSKY: Well, I think I lost him back at Wharton. It's not a contest. It's not going to be a contest over his qualifications, your Honor.

I think the contest is going to be over the substance of his qualifications. This didn't do anything with regard to the Lefrak

building and as I understand the thrust of his testimony, it will be, I think that welfare recipients live in what they call "impacted areas" in the State of New York.

My position is all that is irrelevant to the issues here.

THE COURT: Why are we wasting all this time?

MR. BRODSKY: Don't ask me.

THE COURT: I told you to stipulate, where possible, about the qualifications. We wasted 10 minutes here no.

MR. BRODSKY: I don't doubt this witness did all the things he said, not in the least and I told Miss Balen that.

THE COURT: I take it you don't object to his qualifications but as to the relevancy of his testimony?

MR. BRODSKY: Exactly.

THE COURT: You may proceed. That's enough about the qualifications. He seems to be not only highly educated but well qualified.

Q You mentioned work research and writing

that you had done on housing in New York City.

Could you tell us what the names, if they had titles, of these projects were?

A Everything. There may be two relevant pieces of work.

Q This is housing in New York City?

A Right. One is this document, which is called "The Urban Housing Dilemma," which is authored by Professor George Steinlieb (phonetic spelling).

My association with Professor George Steinlieb in this venture was to give him statistical advice and to advise how to go about doing part of this study and I'm quite familiar with some pieces, with reference to welfare recipients, because in following up some of the findings in this study in order to produce an associated study that we did for the Ford Foundation, which was a study of a random sampling of welfare recipients and a study of their associated housing.

We combined the information that was gleaned in this study with the data that was reported in detail in this book (indicating).

Q What was the urban housing dilemma as it pertained to welfare recipients?

A That is not simply answered.

THE COURT: What has that got to do with it?

THE WITNESS: I will try to simplify it and clarify it as best as I can.

THE COURT: It seems we are wasting all this time.

MISS BALEN: Some of the dilemma in housing does have reference to later work.

MR. BRODSKY: Do they have any relevance to the issues we're trying?

THE COURT: Does it have any relevance to the issues in this case?

MISS BALEN: Your Honor, the witness has done nothing with regard to this case. The witness has written a book about welfare recipients.

THE COURT: Why don't you ask him about his conclusions rather than about his book?

MISS BALEN: Your Honor, I was actually going to get into the substance, if I may ask about one particular book in detail. That's what I had in mind.

THE COURT: If the books are relevant, I

suppose I should read them. I don't think I should take up the time discussing it.

MISS BALEN: I would be glad to supply the Court with a copy of the books. I know counsel had a copy of the book and has got it for some time.

THE COURT: If you wish to proceed to ask him with reference to this case, I'd appreciate it.

Q Did you look into discrimination in housing against welfare recipients in New York City?

MR. BRODSKY: Your Honor, if the question is not in any way related to the Lefrak Management Corporation, to any of the Lefrak buildings, to any Lefrak practice, then I object.

THE COURT: Well, it might be relevant in reference to the overall picture.

A I think that there are several things at I would like to say with reference to this and first kind of thing is that I would suggest that familiarize yourself with or refer to the material, 'Ecology of Welfare,' in the tuns 23, 24, 25 and 26 -

THE COURT: What page?

THE WITNESS: These are pages 20, 21, 22, 23 that speak of - I have to back up slightly- what we did in this study was take a random sampling of welfare recipients, the listing of all welfare recipients who were collecting as of, I think it was February of 1970.

We got access to this through the cooperation of the HRA in New York City and we then took a random sample of welfare recipients and this random sample generated samples of people representative of all welfare recipients in New York City and what we did with that random sample was shown in the exhibits as a distribution of where they are presently living and it seems to me quite clear that there are very limited areas of concentration of welfare recipients in housing in Manhattan, between Broadway and I guess it's the East River, between 96th Street and 125th Street.

In Brooklyn, it's in the area of the the northeast side, north of Linden Boulevard and east of Flatbush Avenue and in the Bronx, in the south Bronx, but, basically, bordered by the Bronx River Expressway and Fordham

Road and, to some degree, in Queens north of Jamaica Avenue but the concentration in Queens is much more sparse but clearly the areas of the Bronx, Brooklyn and Manhattan show a patterns, it seems to me, of pattern occupancy which is, it would seem to me, a result of a variety of factors, including ethnics, welfare and other kinds of discriminatory practices in general that have been affecting where welfare recipients live.

Now, there are several other areas that I would refer to with reference to specific aspects of discrimination, on pages 88, 89 and in that area just beyond, going up to, I guess, page 96 of the "Ecology of Welfare."

In answer to the question in searching for housing do you feel that you were fairly treated, which is a question we asked of the random sampling of welfare recipients, four out of five of the respondents responded affirmatively.

Now, as to the question, the next question that we asked with reference to those who responded "yes," we asked on what basis -

(interruption)

MR. BRODSKY: Your Honor, before the Professor continues, I just want to note again so that my record is protected here, that the questions and answers of people, obviously, the evidence is hearsay. I don't understand.

Again, these are not people who have applied for apartments in Lefrak Village and, again, I would like to note my objection to it on the grounds of relevancy as to this issue.

THE COURT: She will tie it in, I suppose.

MR. BRODSKY: I don't know how.

THE COURT: Well, we will see. You may proceed and we will see. If not, you can make a motion.

THE WITNESS: I think the material in this segment here that I referred to, spells out the responses of the respondent in this study which reflect again a random sampling of all welfare recipients when asked specifically.

I don't want to take the Court's time and

read the whole series of pages.

THE COURT: You might just list the apartments and reasons.

THE WITNESS: OK. Some of the data reflects associations in responses related to the type of welfare recipient, for example, as old age recipient, and felt less discriminated against than others.

Various ethnic minority groups felt more discriminated against. There are different evaluations by blacks and Puerto Ricans as the result of variations in their levels of aspiration.

There seems also to be a variety of responses that, for example, reflect something as a typical response as to how people acted.

If, when you arrived at the office and showed a very bad appearance and when somebody said, "I have no husband," then they moved from place to place until they got a poorer apartment.

In effect, people were telling us they got a run around. The single most common form of discrimination mentioned in 82 cases was

reported discrimination associated with welfare status, 40.2% of the 82 responses gave this as the sole reason.

Another 30.7% reported racial discrimination and size of household was volunteered by 29.9%.

There were other associated problems associated with security deposits, brokerage fees, deposits for utilities that seemed also to be related to the fact the people involved were welfare recipients and also associated with the fact that many of the people involved were from ethnic minority groups, blacks and Puerto Ricans, male.

There are other problems here but I think some of it is a little less cogent but I just wanted to make another point related to the earlier point that may have to do with the segregation or pattern of welfare recipient's lives.

If you look at pages 123, 124, 126 and 126, where what we've done now is where the welfare recipient lived within the various boroughs of New York with their ratings of the safety in

the area, I think if you look at the darker dots which reflect poorer evaluations of safety, I think you will find that there is a heavier concentration of these poorly evaluated areas in terms of safety that seems to be associated with where welfare recipients are presently living or at least were living, as of 1970 and the patterns have not markedly changed.

We did one interesting follow-up, especially from '68 to '70 that may have some relevance, i.e., that we studied the pattern of growth and in cases that we looked at where welfare recipients were living in '68 and compared it to where they were living in 1970 and with the increase in welfare recipients between '68 and '70, we found an intense indication, basically in those houses, in those apartments, because New York City is predominantly an apartment dwelling operation when it comes to housing, in the neighborhood of, I think it was, seventy some percent - I think it's Exhibit 41 in the book - Yes.

THE COURT: Forty-one?

THE WITNESS: Forty-one, on page 54. We find 78.2% of welfare recipients at the time of the study were living in apartments; 11.7% were living in public housing; 4.1% were living in houses; and 6.1% were living in single room occupancy, basically, and this includes a very small percentage that were living in hotels.

The point I was trying to get to was there is a pattern of intensification that is present, which is shown by the increase in number of recipients in housing units that already have or had recipients in '68 - that is, in 1970, they tended to have a higher percentage of welfare recipients so we're getting an intensification of an already difficult problem with reference to housing.

I might also say that from the pair of studies (indicating), there is a very considerable relationship between welfare, the proportion of people on welfare in a housing unit and the condition of that housing unit.

The data is presented in both "The Urban

Housing Dilemma"and in our book on "The Ecology of Welfare."

There may be other things that you want to ask about.

Q With regard to this question of discrimination in housing against welfare recipients, did you find anything else? Do you have any data on that subject concerning an approach other than in perception of this problem?

MR. BRODSKY: Again, your Honor, unless there is any relationship between the question of Lefrak buildings, I would object.

THE COURT: We will assume you object to it, on the same grounds, to all this line of questioning.

MR. BRODSKY: Thank you, your Honor. That will make it simpler. Thank you.

Q I'm referring to - if I may?

A Go ahead.

Q If I may refer to chapters in the books, since we have been doing that, in Chapter 4, "The Welfare Recipient's Housing," do you have data or did you include data in that chapter concerning authenticity and location of recipient's housing by buildings?

A Well, there are several tables that may be relevant. Table 47 seems to me to be one where what we did was cross-tabulate or cross-compare the percentage of people on welfare in the rent control studies, which is "The Urban Housing Dilemma" study of rent-controlled apartments and the ethnicity and what's reflected here is that a large proportion of all white structures have no welfare recipients and a much smaller percentage of structures that are all black or Spanish-speaking have no welfare recipients.

The figures are 75.7% for the all whites of no welfare recipients; 36.4% of the all blacks have no welfare recipients; and 22.5% of the all Spanish or Puerto Ricans, predominantly, whereas, in the group if you go down the tab' and look at the 33 to a hundred percent and read across the all whites, it's 4.6% of the all whites that are in the 33 to a hundred percent welfare recipients; 28.8% of the all negro or all blacks are in the 33 to a hundred percent and 51.3% of the all Spanish and you can see the same kind of pattern growing down and across the portion of welfare recipients.

The point here that is reflected, it seems to me, is that given ethnicity of welfare tenants in

particular structures, you find a pattern that reflects ethnicity of tenants associated with the proportion on welfare that's not literally a function of ethnicity. It's a function of welfare as well.

You can also see in the material that follows that where we show housing by ethnicity by borough, some additional pattern - should I read the paragraph at the bottom of page 63? That is, on to the top of page 64?

Q Could you give us the conclusions?

A In essence, the welfare recipients are substantially segregated, whether by choice, landlord-tenant selection procedure or other reasons.

There are a couple of possibilities here. With reference to that particular analysis, it was not clear. A subsequent analysis sort of clarifies some of this.

There are segregation patterns by welfare categories. They are also constructive in the sense of understanding what's operating.

If I can backtrack a little bit in "The Urban Housing Dilemma" and in some of the analyses that we present here, we make a break in terms of different kinds usually associated with age and the number of

units in the building of the different kinds of rent-controlled apartments that were studied in detail in "The Urban Housing Dilemma? and also studied and reported on both this study in "The Urban Housing Dilemma" and "The Ecology of Welfare" that showed a clear pattern of association between the degree of welfare and the type of housing, just to support what I said a moment ago.

I just noticed Exhibit 4, page665, and 9 which are the exhibits that show the concentration of density between April/68 and February of '70, which deals with the question that was raised just prior to the present question.

With reference to this particular issue, segregation by welfare categories, it is clear that single room occupancy type dwellings are dominated by old age recipients.

The predominance of families in certain kinds of housing seems to be associated with the pattern of types of housing, ages, and discrimination on the part of landlords in general.

We talk about new law housing. Here, we're talking about - let me refer to what's reported in "The Urban Housing Dilemma. That specifies on

page 640 and 641, 642 and 643, it specifies what the designations refer to. Old law tenant apartments were five to 19 apartments, old law structures, with 20 or more apartments and new law structures were five to 19 apartments, new law structures with 20 to 49 apartments and new law structures with 50 apartments and in 1929 structures there were 10 to 49 apartments.

Most 1929 structures were with 50 or more apartments and then a set of three or four unit structures, which was studied as part of "The Urban Housing Dilemma."

I would say, generally, that there are considerable stratifications whereby the welfare recipients and ADC families, particularly, tend to be living in the older poorer condition type housing that exists in New York City and that you're operating in a housing market, primarily, that has a pronounced scarcity of accommodations and this, it seems to me, puts welfare recipients in a very difficult kind of position so that they are living in poorer conditions and in one of the segments of study we were able to show, in fact, that on the average, for comparable apartments, welfare recipients are paying slightly more for apartments than comparable apartments for non-welfare recipients

There are a variety of kinds of problems that are double and triple packed for welfare recipients with reference to housing.

I think, also, that there are additional kinds of problems that are reflected in terms of the attitudes and aspirations of welfare recipients that may be of some material interest here and there are also segments of "The Urban Housing Dilemma" which is, in part, a study of landlords that by and large has much of the data that was accummulated from studies, in the process of the studies here.

Data was systematically checked not only for the economics of the apartments and the utilization of those apartments but data was directly collected from landlords with reference to their views towards welfare recipients.

Now, I don't know whether you want to get into this or not. In other words, there are two areas that may have further relevance. One has to do with the landlord's responsibility.

Q Please go on.

THE COURT: I don't see any relevancy to most of what he testified to.

MISS BALEN: Your Honor, it is, we thought

and we contend, a traditional approach to a fair housing case as in any other case brought under a Civil Rights Act action.

That is, we are not only trying to show that a particular practice or practices complained of, of a racial effect as that's defined in the cases, construing the laws involved, but that there are consequences to that practice or practices which contribute or aggregate the racial effect and give rise to a need for relief.

I could cite any number of cases in which this approach was taken.

THE COURT: I'd rather you do that later and proceed with this witness.

What else do you want to ask him?

MISS BALEN: Well, I wanted you to hear about what he was saying about landlords' attitudes.

THE COURT: How are you going to make that relevant to what this landlord did? He's the one being sued.

MISS BALEN: This case comes up in an environment in the City of New York and there

are certain effects operating on a class of welfare recipients that make it very important to have the practice or practices of the defendant ended.

In other words, it's not just that those practices have that effect but it's also by not ending them there are serious consequences to the class, a continuation and worsening of this present housing situation.

Now, I believe this was discussed with the Court before but I see this as analogous to a situation or a case involving facts where there is or ought to be approval for lowest income housing projects.

That lowest income housing project will not create segregation but the consequences of not permitting it which are, in part, continuation of segregation contributing to the Court's decision to grant relief in such a case, that will.

Now, in our case, in this case we see something similar in operation, that is, the incorporation of the practices of Lefrak and Life Realty we're complaining about, which is not going to completely transport them out of ghetto

housing yet for those practices to continue to be clothed in legality in the future in the State of New York, that the welfare recipient will never get out of these.

THE COURT: The answer to that is you should present that to another forum, the legislature, the City Council or whatever the appropriate forum is. We deal in litigation.

We couldn't fashion an order to solve all the problems the witness indicates.

MISS BALEN: I think your Honor misunderstood. We're not only interested in relief from the practices of the defendant but we are showing the consequences of that practice not because we're asking the Court to change them but because they are in a class, because the practices we're complaining about are in the class of practices referred to by "built in" against minority groups and unless they are removed the consequences we are demonstrating will continue and worsen.

THE COURT: You go ahead and try the case the way you want and then you'll have the higher courts to correct me if I'm wrong. You

go ahead and present it and then I'll eliminate those portions I think are not relevant and you can decide what you want to do about that in the event you were not to prevail here but, frankly, I think it's a little remote.

I may change my mind but I think it's remote, not relevant, in other words.

MISS BALEN: Your Honor, we have several more witnesses.

THE COURT: On this same line?

MISS BALEN: Two, yes.

THE COURT: We better hurry and get through this one then.

MISS BALEN: Could we have a recess, your Honor?

THE COURT: Yes.

MR. BRODSKY: I just wonder, Miss Balen, how long you'll be. I want to have my witnesses here immediately after you're finished. I wonder if we could have any guidance on that.

THE COURT: Yes. How much longer do you think you ought to have?

MISS BALEN: Assuming we aren't prevented

from presenting our witnesses, I would say the end of this day and another half day.

MR. BRODSKY: I reasonably can predict that I can put my case in, in a day or less, your Honor.

THE COURT: Well, I have another case coming on Thursday. I better tell them not to come.

MR. BRODSKY: Well, I'll have all my people here just as soon as Miss Balen finishes.

THE COURT: I want to give you every opportunity to present whatever you want to.

MR. BRODSKY: Most of my people will be brief, your Honor. I believe they all will be brief, your Honor.

THE COURT: We will recess for 10 minutes.

(Whereupon, the court was in recess from 3:50 p.m. to 4:00 p.m.)

MISS BALEN: I would like to apologize to the Court if the testimony appears to be taking an undue length of time. We are proceeding as expeditiously as we can.

I would like to point out in connection with the previous discussion that we are

attempting to follow the pattern set in a case decided by the Second Circuit just last year involving discrimination in housing against welfare recipients, Male v. Cross Road Road Associates.

If the Court would prefer, in following this witness' testimony, I would be glad to offer a copy of the witness' book which is the book on "The Ecology of Welfare" for the remainder of the testimony.

THE COURT: Well, the testimony is incorporated in exhibits and I was going to ask the witness if he could loan me the books tonight.

THE WITNESS: Certainly.

THE COURT: I can well understand it's a class actimn and this material might well be relevant as to background and it might reflect or give some light with reference to this case so I thought I would look over the books and see just what the findings the professor had and see how they would fit in with reference to this case.

Do you have anything that you or the professor thinks I should devote my special

attention to in the books, I would be glad to receive it.

MISS BALEN: Yes.

THE COURT: Or anything else that you want. I want you to have a full opportunity to present your case.

MISS BALEN: Thank you, your Honor. I have specific questions.

Q Do you have any data concerning landlords' attitudes in New York City towards welfare recipients in your book?

A The data with reference to that is reported in "The Urgan Housing Dilemma" by Professor Sterlieb (phonetic spelling).

Q Are you familiar with that data?

A Yes, indeed.

Q Could you state any conclusions from that data?

A Relevant to this, particularly, on page 348 and in that area, when landlords were asked whether they wanted welfare tenants and a frequent response among them was, "No; I won't take any in the building."

This is a study of all rent controls or 90%, something of that nature, where all rent-controlled

apartments in New York City, whether correct or not, seems to be a strong feeling on the part of landlords that taking in welfare tenants may be the beginning of deterioration of the building.

The possibility of this being a selfishly fulfilled prophecy. It says the landlord is sure that welfare tenants bring the ruining of the building and, therefore, their entrance into the building does not maintain the building.

There are some specific examples that are, in fact, samples in the study specified. There is additional material but nothing quite as explicit is that in the book.

Q Do you have any data concerning the effect of the housing on the attitude of recipients?

A Of course.

Q What are your conclusions with respect to that data, if you have it?

A There are two relevant points here. The first is shown on page 217 of "The Ecology of Welfare."

When we compared the interior maintenance rating given by the interviewer of the structure, in which welfare recipients were living with a measure of

satisfaction with housing and I want to specify this measure of satisfaction with housing because there has sometimes, in other court cases that I'm familiar with, been a question raised about measuring people's satisfactions and attitudes.

Q Is this in your book, doctor?

A Yes, indeed.

Q Could you state your conclusions for us now?

A Yes, sure.

Q First, what you decided or looked for and then what your conclusions were with respect to that.

A The technical material supporting the measures that we used is reported in the chapter of the the welfare recipient towards his housing and its setting in the first part of the chapter.

The conclusion here is that there is a relationship, a correlation between the interior maintanance rating of the interviewer and the welfare recipient towards his housing.

That's a positive correlation where there is better interior maintenance and there is a more positive attitude by the recipients towards the housing.

Where there is a poorer maintenance, there is a poorer evaluation of their satisfaction with their housing.

That is, the satisfaction with housing and the actual condition of housing is clearly linked. That's one conclusion that I think is material.

Secondly, on page 221, reflecting on the data in the prior tables, it seems to me that if you're looking at the question of how people can get up and out of poor housing, welfare recipients here, what have you, one of the questions here is what's the relationship between housing, satisfaction with housing, plans for the future and aspirations.

One of the results I would have to mention here is that there is some relationship between housing satisfaction and plans for the future, the concentration of welfare recipients indicated in the chapter shown earlier and the continuation of this kind of process might well lead us to a welfare society; that is, specific areas of this city that are almost completely welfare recipient communities.

Now, it is my understanding, with poor housing and all the associated kinds of patterns to it, it is my understanding of the Housing Act of 1949

that it stated that the national objective was the realization, and this is in 1949, as soon as feasible, to have a goal of a decent home and a suitable living environment for every family.

It seems to me that in 1973 we are very far from this objective, which was stated in the Act of '49.

Q Professor Indik, I show you Plaintiff's Exhibit 28, marked for identification, and I ask you if you can tell us what it is (indicating).

A This shows the direction of welfare recipients in the Borough of Manhattan and the direction of welfare recipients in the same study in the Borough of Brooklyn.

Q Is this from your book?

A Yes. It is from "The Ecology of Welfare," on the pages I noted earlier.

MISS BALEN: I offer this exhibit in evidence, your Honor.

THE COURT: Any objection?

MR. BRODSKY: Yes, your Honor; objection on the grounds I already stated, on the grounds it has nothing to do with it.

THE COURT: I will admit it subject to that.

(A map survey of Brooklyn previously marked Plaintiff's Exhibit 28 for identification was marked in evidence)

Q Professor Indik, I show you Plaintiff's Exhibit 29, marked for identificatimn, and I ask you if you recognize it (indicating).

A Yes. These are from "The Ecology of Welfare Recipients" showing the distributions of welfare recipients in the Borough of the Bronx and in point six the Boroughs of Queens and Richmond.

MISS BALEN: I offer this exhibit in evidence.

MR. BRODSKY: The same objection, your Honor.

THE COURT: The same ruling.

Mark it.

(A map survey of Queens previously marked Plaintiff's Exhibit 29 for identification was marked in evidence)

Q I show you Plaintiff's Exhibit 12, marked for identification and I ask you if you recognize it (indicating).

A Yes. This is a table that is a cross tabulation of ethnicities of tenants by personnel of welfare

recipients in housing that appears in Professor Steinlieb's book, "The Urban Housing Dilemma" in 1970 and also appears as an exhibit in "The Ecology of Welfare".

MISS BALEN: Thank you. I offer this table in evidence, your Honor, this exhibit.

MR. BRODSKY: Same objection.

THE COURT: Same ruling.

(Plaintiff's Exhibit 12, previously marked as for identification was marked in evidence, being tabulation tables)

Q I show you Plaintiff's Exhibit 13, marked for identification, and I ask you if you recognize it (indicating).

A Yes. This is the number and percentage of welfare tenants, cross-tabulated by ethnicity of tenants.

That comes from "The Urban Housing Dilemma" and also is reprinted in "The Ecology of Welfare."

MISS BALEN: Thank you. I offer this Exhibit 13 in evidence.

MR. BRODSKY: Same objection, your Honor.

THE COURT: Same ruling.

(Plaintiff's Exhibit 13, previously

marked for identification, was marked in evidence, being tabulation tables)

Q I show you Plaintiff's Exhibit 14 marked for identification and I ask you if you recognize it (indicating).

A Yes. This is the relationship shown between interior maintenance rating and percentage of welfare tenants by interior maintenance ratings or by the percentage, excuse me, percentage of welfare tenants.

This appears in both "The Urban Housing Dilemma" and "The Ecology of Welfare."

MISS BALEN: Thank you. I offer Plaintiff's Exhibit 14 in evidence.

MR. BRODSKY: The same objection, your Honor.

THE COURT: Same ruling.

(Plaintiff's Exhibit 14, previously marked for identification, was marked in evidence, being tables.)

Q I show you Plaintiff's Exhibit 15, marked for identification, and I ask you if you recognize it (indicating).

A Yes. This is a table, cross-tabulating interior maintenance ratings and percentage of welfare

tenants that appears in "The Urban and Housing Dilemma" and also in "The Ecology of Welfare."

MISS BALEN: I offer Plaintiff's Exhibit 15 in evidence.

MR. BRODSKY: Same objection.

THE COURT: Same ruling.

(Plaintiff's Exhibit 15, previously marked for identification, was marked in evidence, being tables.)

MISS BALEN: I have no further questions of this witness at this time.

THE COURT: Very well. Mr. Brodsky?

CROSS-EXAMINATION BY MR. BRODSKY:

Q Professor Indik, did any of your studies ever isolate, in any way, any of the buildings owned by what we call in here the Lefrak Organization?

A I'm not sure how to answer this question for two reasons:

The first one is that I am not completely sure whether there are any welfare recipients who are in our study of welfare recipients that also had direct contact with the Lefrak Organization.

Q You don't know one way or the other?

A I'm not sure, no. It is possible that

they were not. Further, in the study of rent-controlled apartments, as reported in "The Urban Housing Dilemma" and this volume (indicating), "The Ecology of Welfare," I don't know whether Lefrak was an included landlord.

He could be if he had rent-controlled apartments. I'd be interested to find out if he did.

Q But you don't know, as you sit here, whether any of his apartments were excluded in the study?

A If they were rent-controlled, I would assume from the process we went through of inclusion of rent-controlled apartments, that they were.

Q But you don't know?

A I don't know for sure, no. Further, there was also a sub-set done for corroboratory purposes. That is reported in "The Urban Housing Dilemma" of non rent-controlled apartments. I'm not sure, again, whether any of those are Lefrak controlled apartments.

Q And you talked also about certain practices of landlords, excluding welfare recipients, giving them, I think you put it as a "run around" from one place to another.

Do you have any knowledge whatsoever of what the Lefrak Organization renting practices were with regard to welfare recipients?

A You mean direct contact?

Q Yes.

A I don't have direct front, first hand cntact, no.

MR. BRODSKY: I have no further questions.

MISS BALEN: No redirect, your Honor.

THE COURT: Is the witness excused?

MISS BALEN: Yes, your Honor. The witness is excused.

THE COURT: Professor, you'll be excused and if you'll loan me the books, I'll return them to Miss Balen.

THE WITNESS: Thank you.

(The witness was excused)

MISS BALEN: Your Honor, the plaintiff will call me as her next witness.

Yesterday, I discussed this possibility with the Court, that I would have to be a witness in court and an affidavit was submitted to the Court.

THE COURT: Yes. I read the affidavit. I have it here. Would you like it back?

MISS BALEN: Only if your Honor wishes to give it back.

MR. BRODSKY: Your Honor, before we get to that aspect, I now move to strike the testimony of Professor Indik as not bearing on any of the issues involved in this case.

Professor Indik did not testify about any Lefrak practices, does not know about any Lefrak practices and I think all of his testimony is not relevant to the issues we are trying here.

THE COURT: Very well. I will take it under advisement the same way as we did the other motion.

I have read the affidavit and also checked into the legal question on your telephone call and unless you have some cases, it seems both Judge Friendly and Judge Hand have had these cases before them and they decided that it would be admissible.

Are you familiar with those cases?

MR. BRODSKY: I am, your Honor. I think that I would distinguish those cases. I mean you're calling an official asking about a whole policy rather than a specific question that may be involved, not knowing what you're

talking about, who you're talking about. I did distinguish those cases. I am aware of them.

THE COURT: I understand this is much more specific than that, Mr. Brodsky. I understand Miss Balen said she called, she looked up the number first in the telephone book and she called that number and that they answered and said it was the real estate firm.

Then she asked to talk to the person in charge of the rentals or some such thing that's involved in this case and that person came on and identified himself as being so and so.

According to what Miss Balen said yesterday, I think it's a little bit stronger than perhaps the Friendly case and equally as strong as the Hand case.

I did not misstate the sequence, did I?

MR. BRODSKY: No. I understand the prospective testimony to be the way you described it, your Honor, yes.

THE COURT: On the ethical considerations, having been Chairman of the ABA Committee on that, that is a matter that has come to my

attention over some years and, as I understand it this was prior to the time that you came in contact with this case or indeed with this plaintiff.

MISS BALEN: No. I knew the plaintiff but this was not the case.

THE COURT: You knew the plaintiff?

MISS BALEN: Yes.

THE COURT: That's why you called?

MISS BALEN: Yes, your Honor.

THE COURT: But you didn't know of any action? You weren't calling to investigate the case?

MISS BALEN: Not at all, no.

THE COURT: So that's a matter whenever anybody raises a question like that, well, that's a personal matter and some of them would say since they raised it themselves, they felt, perhaps, they shouldn't sit.

However, I didn't take that position. I sat in on cases in which my firm represented the same parties way back, 15 years before while Justice Reid, on the other hand, would never sit on a C & O case because he repre-

sented the C & O in 1928, which is about twice as far back as my experience so I think it largely depends upon the individual so in so far as those two issues are involved, why I'll leave that up to you.

MISS BALEN: Thank you.

THE COURT: I will receive the testimony if you wish to give it.

MISS BALEN: Thank you, your Honor.

THE COURT: Would you like to start tomorrow?

MISS BALEN: I believe the testimony will be brief. That is as to what I have to say, yes.

Can I testify in a narrative form?

MR. BRODSKY: That's up to counsel. I don't object to that if Miss Balen wants to do it that way.

I've objected to the testimony, as a whole, but as far as the procedure is concerned, if Miss Balen wants to take the stand, I have no objection as to the procedure.

THE COURT: I suppose it's appropriate as to the narrative. How long will that take?

MISS BALEN: Depending on how fast I speak and how fast the stenographer takes it down.

RUTH BALEN, after having been first duly sworn, testified as follows:

EXAMINATION BY THE COURT:

Q Very well, Miss Balen, what do you have to say?

A In late June and early July of 1971, I was acquainted with the plaintiff, Dorothy Boyd, in this case.

Through representation in other matters, unrelated to this case, in the course of that other unrelated representation, I learned that Mrs. Boyd was in need of housing.

Coincidentally, at the same time, listings of Lefrak vacancies, which were prepared by Operation Open City of New York, came into my hands in that they were mailed to my office for use of anyone in the office and after looking at the list, I sent them to Mrs. Boyd.

Almost immediately after I received them in late June of '71, in the beginning of July, 1971 and I recall the date as July 7, 1971, I received a telephone

call from Mrs. Boyd. I knew her voice well as we had talked many times on the telephone and in person.

She said that she had gone - (interruption)

MR. BRODSKY: Just a minute. I do object to conversations between Miss Balen and her own client. That, I do object to, your Honor, unless they are admissions.

THE WITNESS: I wish to explain how I came to make the telephone call, which is relevant.

MR. BRODSKY: I don't think any conversation between Miss Balen and Mrs. Boyd is.

THE COURT: Suppose you don't describe the conversation but just describe the events.

THE WITNESS: On July 7th, Mrs. Boyd told me in a telephone call - I'm sorry, your Honor - I was informed by Mrs. Boyd that she had applied with Lefrak - (interruption)

MR. BRODSKY: That's the same thing, your Honor.

THE COURT: Why can't she just say she called the company incident to finding out about apartments?

MR. BRODSKY: If that's what she did.

THE COURT: That's what you did, isn't it?

THE WITNESS: The testimony is Mrs. Boyd told me she had been refused an apartment because she was a welfare recipient.

MR. BRODSKY: I object to that and move to strike it. That's the part I'm objecting to, your Honor.

It's a self-serving statement, particularly when a lawyer is testifying in behalf of her own client.

THE COURT: You called up and found out the circumstances concerning Mrs. Boyd's contacts with the company?

THE WITNESS: Exactly. That's it exactly.

THE COURT: Go ahead and describe the rest of it. How did you do it?

THE WITNESS: I looked up the number, the telephone number of the Lefrak Organization's main office in Queens.

I telephoned that office and I do recall that the first three digits I called were IL-9 - I don't remember thelast four digits.

When I reached the number, the telephone

was answered it was something to the effect of "Lefrak." There may have been other words in the way the telephone was answered.

I then asked to speak with a vice president. I was asked, "What sort of vice president" or what sort of information are you seeking" and I said I was interested in rental policies.

I was then put through to a party who answered the telephone and I can identify him as a man and I asked him what is his name, what his name was, and he said, "Mr. Ricter" (phonetic spelling) and I asked what is his position, what his position was there, and he said he was the vice president for management.

I then proceeded to tell him that I was an attorney, that I had a client that applied for a Lefrak apartment and had been refused because she was a welfare recipient and I asked him, "Did the Lefrak Organization have a policy against renting to welfare recipients?"

He replied that, "Yes, they did" and I asked him for an explanation of that policy. He mentioned the 90% rule, the financial standard by

the Lefrak Organization and went on also to talk about fears which he felt the Lefrak Organization had of complaints, problems that would be caused from renting to welfare recipients as tenants.

He felt or he said that one of the policy considerations was that welfare recipients would destroy buildings or apartments in which they lived causing a great deal of expense to the landlords after they vacated.

He volunteered that no welfare recipient could qualify for a Lefrak Apartment and that they had even been approached by New York City and offered a guarantee of rent payments if they would accept welfare recipients and they even turned that down and that was the conversation.

THE COURT: Is there any cross-examination?

MR. BRODSKY: Just a little, afterwards.

MR. GEMINIANI: In behalf of the Intervenor.

DIRECT EXAMINATION BY MR. GEMINIANI:

Q Did there come a time when you saw the intervenor-plaintiff in connection with the housing

problem?

A Yes.

Q What was that problem?

A In March of '72, the Intervenor-Plaintiff asked for my assistance in connection with her attempts to rent a Lefrak Apartment.

Q What did you do with respect to that apartment?

A I wrote the letter to the New York City Department of Social Services, to the Social Services or Local Welfare Center of the Intervenor-Plaintiff requesting that they guarantee the rent for the Intervenor-Plaintiff so she could rent the Lefrak Apartment.

Q I show you Plaintiff's Exhibit 10, which has been marked for identification, and ask you if you can identify that exhibit.

A That exhibit? Yes. This is the letter I sent.

Q To the Department of Social Services?

A That's correct, to the Social Services Center.

MR. GEMINIANI: At this time, we move to admit this in evidence as Plaintiff's Exhibit 10.

Any objection?

MR. BRODSKY: Yes. I object to it on the grounds that is a self-serving statement by an attorney who is representing a client in this case.

She says, for example, Mrs. Stoney has recently attempted to rent an apartment from Lefrak Apartments and was prevented from doing so because she could not obtain a guarantor of rent. Mrs. Balen doesn't know this. This is all hearsay so I object to it.

THE COURT: I take it she did talk to the Company.

MR. BRODSKY: This has nothing to do with the Company. This is a letter to Social Services.

This is a completely unrelated incident.

THE COURT: I understand she did talk to the Company prior to writing the letter.

MR. BRODSKY: That was a long time previous to that and this was with respect to a different client she was writing about with respect to a different issue.It has nothing to do with this issue.

THE COURT: What client is that?

MR. BRODSKY: Mrs. Stoney, the Intervenor, and the issue is completely different. No claim is made in this letter or anyplace else that the Lefrak Organization doesn't rent to welfare recipients. The issue is completely different.

My position on this exhibit, whatever the number is - 10 - is that it's simply hearsay and should not be admitted.

MR. GEMINIANI: Your Honor, we are not using it to submit the proof of what's contained in the letter. Rather, we are introducing it as a letter sent by Miss Balen to Social Services and I think Plaintiff's Exhibit 11 for identification is the response from the Department of Social Services.

THE COURT: It will be admitted into evidence.

MR. GEMINIANI: Exhibit 11 also, your Honor?

THE COURT: She hasn't identified it yet. I take it that's a response?

MISS BALEN: Yes, your Honor.

(A letter from Miss Balen to the Social Services Department, previously marked Plaintiff's Exhibit 10 for identification, was marked in evidence)

Q I show you Plaintiff's Exhibit 11, which has been marked Plaintiff's Exhibit 11 for identification, and ask you if you can identify it (indicating).

A This is the original letter and response and enclosure, the response to my previously marked Exhibit 10.

THE COURT: Any objection to that?

MR. BRODSKY: Yes. I have the same objection.

THE COURT: Very well. It will be admitted on the same basis.

(A letter from the Social Services Department to Miss Balen, previously marked Plaintiff's Exhibit 11 for identification, was marked in evidence)

MR. GEMINIANI: No further questions at this time.

THE COURT: You may examine the witness, Mr. Brodsky.

CROSS-EXAMINATION BY MR. BRODSKY:

Q Miss Balen, did you make a memorandum of the conversation you say you had with Mr. Ricter?

A Yes.

Q Where is it?

A My assistant attorney has it, Mr. Geminiani.

MR. GEMINIANI: Your work product?

THE WITNESS: Yes. I'd like to have it, please.

(Mr. Geminiani handed a paper to the witness)

These were notes I scribbled as I was talking to Mr. Ricter.

Q Can I see it?

A Yes.

(The witness handed a paper to Mr. Brodsky)

Do you want me to tell you what it is?

Q If you like.

A When I received the telephone number, I scribbled it down and I scribbled his name when I spoke to him and these are the notes I took of the conversation as I was speaking with him.

MR. BRODSKY: I guess we really ought to mark this for identification. I do want to use it.

THE COURT: You may mark it, Mr. Clerk, please, for identification.

(Two documents clipped together were marked Defendant's Exhibit C for identification)

Q You made these notes on these white pieces of paper and the yellow pieces of paper at the time of the conversation?

A Well, as I got the telephone number and name I scribbled it out on the white piece of paper and then on the yellow piece of paper I had. obviously a yellow paper, in front of me, I scribbled the conversation as it occurred but only as to some notes from my memory as to what occurred.

Q On the white piece of paper, it says 12:30, if I can read it correctly.

A Yes. That's irregular.

Q That has nothing to do with this?

A No and only to my knowledge and recollection, this square and this square (indicating) are the

only ones which have any relevance to the conversation with Mr. Ricter.

Q 1031 Clarkson Avenue?

A Right.

Q Now, you said in your direct testimony, Miss Balen, if my recollection serves me correctly, that Mr. Ricter said to you that the Lefrak Organization doesn't rent to welfare recipients; is that right?

A Yes. In response to my question, he did.

Q And you wrote it down in your notes as follows: "It is impossible for welfare recipients to qualify"?

A Yes.

Q That's quite different.

A That is one part of the conversation I related and I wrote it down, yes.

Q You mean he said both?

A Yes.

Q But you never bothered to write down the parts where he said they didn't rent to welfare recipients?

A If you see, at the top of my notes, I first wrote down about the 90% rule - I think I wrote down about the maintenance problem and then I wrote

about the New York City approach and guarantee. All those things were said as well as it would be impossible for welfare recipients to qualify for a Lefrak Apartment.

Q That's different than saying, "We don't rent to welfare recipients," isn't it?

A Yes. I don't think I said that.

Q At any rate, you're saying now - (interruption)

A I said, "Is there a policy against renting to welfare recipients?" And he said, "There was."

Q All you wrote down here is, "It's impossible for welfare recipients to qualify." That's all he said, correct?

A I wrote, I think, the sayings on the piece of paper.

Q But you didn't write down on the piece of paper, "The Lefrak Organization has a policy against renting to welfare recipients"?

A That is not a memorandum of the entire conversation. Those were notes jotted down as the conversation was taking place.

Q But you didn't think that statement was important enough to write down?

A I wrote down these things I particularly

wanted to remember.

THE COURT: That makes a lot of difference. You have a policy that sets up qualifications?

MR. BRODSKY: I don't think it's a distinction. I'll go on, if I may.

Q Did you ask Mr. Ricter whether or not a welfare recipient could qualify if he had a guarantor?

A No. I don't think I knew anything about a guarantor.

Q But you didn't ask the question?

A No.

Q Did you ask whether or not a welfare recipient, if he had another form of income, if that welfare recipient could qualify?

A No.

MR. BRODSKY: I have no further questions.

MR. GEMINIANI: No redirect examination.

THE COURT: You're excused.

(The witness was excused)

MISS BALEN: We have no further witnesses today.

THE COURT: We will recess until 9:30 a.m. tomorrow. (The Court was in recess at 4:45 p.m.)

United States Court of Appeals
For the Second Circuit

Dorothy Boyd, individually and on behalf of all others similarly situated,
Plaintiff-Appellee,

Inez Stoney,
Intervenor-Plaintiff-Appellee,

against

The Lefrak Organization and Life Realty, Inc.,
Defendants-Appellants.

On Appeal from the United States District Court
Eastern District of New York

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF New York , ss:

Nathan Chambers being duly sworn, deposes and says that he is over the age of 18 years and resides at 510 Atlantic Ave., Brooklyn, New York

That on the 29th day of July, 1974 at 35 West 125th St. he served the annexed appendix and brief upon Edward R. Dudley, Jr., Attorney for Plaintiff-Appellee and Intervenor-Plaintiff-Appellee in this action, by delivering to and leaving with said attorney two true copies thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned ~~and described in the said~~ x above.

Deponent is not a party to the action.

Sworn to before me, this 29th day of July 1974

Nathan Chambers.

John V. D'Esposito

JOHN V. D'ESPOSITO
Notary Public, State of New York
No. 30-0932350
Qualified in Nassau County
Commission Expires March 30, 1975